

INTUITIVE SURGICAL INC  
Form DEF 14A  
March 06, 2013

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**SCHEDULE 14A**

(Rule 14a-101)

**INFORMATION REQUIRED IN PROXY STATEMENT**

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the Securities**

**Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Section 240.14a-12

**INTUITIVE SURGICAL, INC.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- .. Fee paid previously with preliminary materials.
  
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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**1266 Kifer Road**  
**Sunnyvale, California 94086**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON APRIL 25, 2013**

To THE STOCKHOLDERS OF INTUITIVE SURGICAL, INC.:

Notice is hereby given that the 2013 Annual Meeting of Stockholders of Intuitive Surgical, Inc. will be held at Marriott Santa Clara, 2700 Mission College Boulevard, Santa Clara, California 95054 on Thursday, April 25, 2013, at 3:00 p.m., Pacific Daylight Time, for the following purposes:

to elect three members to the Board of Directors (the Board ) to serve until the 2014 Annual Meeting of Stockholders (Proposal No. 1);

to approve an amendment and restatement of Intuitive Surgical's 2010 Incentive Award Plan (Proposal No. 2);

to consider an advisory vote on the approval of the compensation of our named executive officers (Proposal No. 3);

to ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013 (Proposal No. 4); and

to transact any other business which is properly brought before the Annual Meeting or adjournments or postponements thereof. Only stockholders of record at the close of business on February 25, 2013 are entitled to notice of, and to vote at, the Annual Meeting or any adjournments or postponements thereof.

We are pleased to continue to take advantage of the Securities and Exchange Commission (the SEC ) rules that allow us to furnish our proxy materials to our stockholders by providing access to such documents on the Internet instead of mailing printed copies. Accordingly, most of our stockholders will receive a Notice of Internet Availability of Proxy Materials (the Notice ) instead of a paper copy of this Proxy Statement and our 2012 Annual Report. The Notices are being mailed to stockholders starting on or about March 13, 2013. We believe that this process allows us to provide our stockholders with the information they need in a more timely manner, while reducing the environmental impact and the costs incurred by us in printing and mailing the proxy materials. The Notice contains instructions on how to access those documents over the Internet. The Notice also contains instructions on how to request a copy of our proxy materials, including the attached Proxy Statement, our 2012 Annual Report and a form of proxy card or voting instruction card, electronically by email.

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Your vote is important. Whether or not you are able to attend the Annual Meeting in person, it is important that your shares be represented. Please vote as soon as possible.

On behalf of our Board of Directors, thank you for your participation in this important annual process.

By Order of the Board of Directors

/s/ Gary S. Guthart, Ph.D.

Gary S. Guthart, Ph.D.  
*President and Chief Executive Officer*

Sunnyvale, California

March 5, 2013

Please note that attendance at the Annual Meeting will be limited to stockholders as of the record date, or their authorized representatives, and guests of Intuitive Surgical.

# INTUITIVE SURGICAL, INC.

## PROXY STATEMENT

### FOR

### 2013 ANNUAL MEETING OF STOCKHOLDERS

## GENERAL INFORMATION

### Why am I receiving these materials?

Our Board of Directors (as sometimes referred to in this Proxy Statement as the Board ) has made these materials available to you on the Internet, or has delivered printed versions of these materials to you by mail, in connection with the solicitation of proxies for use at our Annual Meeting of Stockholders to be held on April 25, 2013 at 3:00 p.m., Pacific Daylight Time, at the location and for the purposes as set forth in the Notice of Annual Meeting of Stockholders. This solicitation is made on behalf of our Board of Directors and we will pay the entire cost of solicitation. Our directors, officers and employees may also solicit proxies by telephone, fax or personal interview. No additional compensation will be paid to these directors, officers and employees for these services. We have retained MacKenzie Partners, Inc. to assist in the solicitation of proxies for a fee of approximately \$12,500 plus reasonable out-of-pocket costs and expenses. Our stockholders are invited to attend the Annual Meeting and are requested to vote on the proposals described in this Proxy Statement. The approximate date on which this Proxy Statement and form of proxy will be first sent and made available to stockholders is March 13, 2013.

### What is included in these materials?

These materials include:

This Proxy Statement for the Annual Meeting; and

Our 2012 Annual Report to Stockholders, which includes our audited consolidated financial statements.

If you received printed versions of these materials by mail, these materials also include the proxy card or voting instruction form for the Annual Meeting.

### What items will be voted on at the Annual Meeting?

You will be voting for the following proposals:

1. The election of three members to the Board of Directors to serve until the 2014 Annual Meeting of Stockholders (Proposal No. 1 on page 39);

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2. The approval of the amendment and restatement of the 2010 Incentive Award Plan (Proposal No. 2 on page 40);
3. The advisory approval of the compensation of our named executive officers (Proposal No. 3 on page 46); and
4. The ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013 (Proposal No. 4 on page 47).

### **What are the Board's voting recommendations?**

The Board recommends that you vote your shares:

FOR the election of each of the nominees to the Board (Proposal No. 1);

FOR the approval of the amendment and restatement of the 2010 Incentive Award Plan (Proposal No. 2);

FOR the approval of the compensation of the Company's named executive officers (Proposal No. 3); and

FOR the ratification of the appointment of Ernst & Young LLP as the Company's independent registered accounting firm for the fiscal year ending December 31, 2013 (Proposal No. 4).

**Where are Intuitive Surgical's principal executive offices located, and what is Intuitive Surgical's main telephone number?**

Our principal executive offices are located at 1266 Kifer Road, Sunnyvale, California 94086, and our main telephone number is (408) 523-2100.

**Why did I receive a notice in the mail regarding the Internet availability of proxy materials instead of a full set of proxy materials?**

We are pleased to continue to take advantage of the SEC rules that allow us to furnish our proxy materials to our stockholders by providing access to such documents on the Internet instead of mailing printed copies. Accordingly, most of our stockholders of record and beneficial owners have received a Notice of Internet Availability of Proxy Materials and will not receive a full set of proxy materials in the mail unless they request them. Instructions on how to access the proxy materials on the website referred to in the Notice may be found in the Notice. If you would like to receive our proxy materials electronically by email, you should follow the instructions for requesting such materials provided in the Notice. Your election to receive proxy materials electronically by email will remain in effect until you terminate such election. Choosing to receive future proxy materials electronically by email will reduce the environmental impact and the costs incurred by us in printing and mailing the proxy materials.

**How can I get electronic access to the proxy materials?**

You can view the proxy materials for the meeting on the Internet at [www.proxyvote.com](http://www.proxyvote.com). Please have your 12 digit control number available. Your 12 digit control number can be found on your Notice. If you received a paper copy of your proxy materials, your 12 digit control number can be found on your proxy card or voting instruction card.

**Who may vote at the Annual Meeting?**

The Board of Directors set February 25, 2013 as the record date for the Annual Meeting. All stockholders of record who owned Intuitive Surgical common stock at the close of business on February 25, 2013 are entitled to receive notice of, to attend, and to vote at the Annual Meeting. Each share of the Intuitive Surgical common stock has one vote on each matter, and there is no cumulative voting. At the close of business on the record date, there were 40,384,763 shares of common stock outstanding.

**What is the difference between a stockholder of record and a beneficial owner of shares held in street name?**

*Stockholder of Record.* If your shares are registered directly in your name with the Company's transfer agent, Computershare Investor Services, LLC (Computershare), you are considered the stockholder of record with respect to those shares, and the Notice was sent directly to you by the Company. If you request printed copies of the proxy materials by mail, you will receive a proxy card.

*Beneficial Owner of Shares Held in Street Name.* If your shares are held in an account at a brokerage firm, bank, broker-dealer, or other similar organization, then you are the beneficial owner of shares held in street name, and the Notice was forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to instruct that organization on how to vote the shares held in your account. If you request printed copies of the proxy materials by mail, you will receive a voting instruction form.



**How can I vote my shares?**

**In Person** If you are a stockholder of record, you may vote in person at the meeting. If your shares are held in a brokerage account or by another nominee or trustee, you are considered the beneficial owner of shares held in street name. If you are a beneficial owner, you are also invited to attend the meeting. Since a beneficial owner is not the stockholder of record, you may not vote these shares in person at the meeting unless you obtain a legal proxy from the organization that holds your shares, giving you the right to vote the shares at the meeting.

**Via the Internet** You may vote by proxy via the Internet by visiting [www.proxymvote.com](http://www.proxymvote.com) and entering the control number found in the Notice.

**By Telephone** If you requested printed copies of the proxy materials by mail, you may vote by proxy by calling the toll free number found on the voting instruction form.

**By Mail** If you requested printed copies of the proxy materials by mail, and if you are a stockholder of record, you may vote by proxy by filling out the proxy card and sending it back in the envelope provided. If you requested printed copies of the proxy materials by mail and you are a beneficial owner, you may vote by proxy by filling out the voting instruction form and sending it back in the envelope provided.

**What is the quorum requirement for the Annual Meeting?**

The holders of a majority of the shares entitled to vote at the Annual Meeting must be present at the Annual Meeting for the transaction of business. This is called a quorum. Your shares will be counted for purposes of determining if there is a quorum, whether representing votes for, withheld or abstained, if you:

are present and vote in person at the Annual Meeting; or

have voted on the Internet, by telephone or by properly submitting a proxy card or voting instruction form by mail.  
If a quorum is not present, the Annual Meeting will be adjourned until a quorum is obtained.

**How are proxies voted?**

All shares represented by valid proxies received prior to the Annual Meeting will be voted and, where a stockholder specifies by means of the proxy a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the stockholder's instructions.

**What happens if I do not give specific voting instructions?**

*Stockholders of Record.* If you are a stockholder of record and you:

indicate when voting on the Internet or by telephone that you wish to vote as recommended by the Board, or

sign and return a proxy card without giving specific voting instructions, then the proxy holders will vote your shares in the manner recommended by the Board of Directors on all matters presented in this Proxy Statement and as the proxy holders may determine in their discretion with respect to any other matters properly presented for a vote at the Annual Meeting.

*Beneficial Owners of Shares Held in Street Name.* If you are a beneficial owner of shares held in street name and do not provide the organization that holds your shares with specific voting instructions, under the rules of various national and regional securities exchanges, the organization that holds your shares may generally vote on

routine matters but cannot vote on non-routine matters. If the organization that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, the organization that holds your shares will inform the inspector of election that it does not have the authority to vote on this matter with respect to your shares. This is generally referred to as a broker non-vote.

**Which ballot measures are considered routine or non-routine ?**

The ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal year ending December 31, 2013 (Proposal No. 4) is considered a routine matter under applicable rules. A broker or other nominee may generally vote on routine matters, and therefore no broker non-votes are expected to exist in connection with Proposal No. 4.

The election of directors (Proposal No.1), the approval of the amendment and restatement to our 2010 Incentive Award Plan (Proposal No. 2) and the advisory approval of the compensation of our named executive officers (Proposal No. 3) are matters considered non-routine under applicable rules. A broker or other nominee cannot vote without instructions on non-routine matters, and therefore there may be broker non-votes on these four proposals.

**What is the voting requirement to approve each of the proposals?**

For Proposal No. 1, each director must be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal. This means that the number of votes cast FOR a director must exceed the number of votes cast AGAINST that director, with abstentions and broker non-votes not counted as votes cast as either FOR or AGAINST such director's election.

Approval of Proposal No. 2, No. 3 and No. 4 require the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal.

**How are abstentions and broker non-votes treated?**

Shares represented by proxies that reflect abstentions or broker non-votes will be counted as shares that are present and entitled to vote for purposes of determining the presence of a quorum. Shares voted ABSTAIN on proposals other than the election of directors will have the same effect as voting against the matter. Brokers, banks and other nominees have the power to vote without receiving voting instructions from the owner on Proposal No. 4, so the Company expects no broker non-votes on this proposal. For Proposal No. 1, No. 2 and No. 3, broker non-votes are not deemed to be entitled to vote for purposes of determining whether stockholder approval of a matter has been obtained. As a result, broker non-votes are not included in the tabulation of voting results for these proposals for purposes of determining whether proposals have been approved. In order to minimize the number of broker non-votes, the Company encourages you to provide voting instructions to the organization that holds your shares by carefully following instructions provided on the Notice.

**Can I change my vote?**

You may revoke your proxy at any time before it is actually voted at the Annual Meeting by:

delivering written notice of revocation to our Corporate Secretary at 1266 Kifer Road, Sunnyvale, California 94086;

submitting a later dated proxy; or

attending the Annual Meeting and voting in person.

Your attendance at the Annual Meeting will not, by itself, constitute revocation of your proxy. You may also be represented by another person present at the Annual Meeting by executing a form of proxy designating that person to act on your behalf. Shares may only be voted by or on behalf of the record holder of shares as indicated in our stock transfer records. If you are a beneficial stockholder but your shares are held of record by another person, such as a stock brokerage firm or bank, that person must vote the shares as the record holder in accordance with the beneficial holder's instructions.

**Who will serve as the inspector of election?**

A representative from Broadridge Financial Solutions, Inc. will serve as the inspector of election to determine whether or not a quorum is present and to tabulate votes cast by proxy or in person at the Annual Meeting.

**Where can I find the voting results of the Annual Meeting?**

The preliminary voting results will be announced at the Annual Meeting. The final voting results will be tallied by the inspector of election and published in our current report on Form 8-K within four business days after the Annual Meeting.

**How can I attend the Annual Meeting?**

Attendance at the Annual Meeting is limited to stockholders. Admission to the Annual Meeting will be on a first-come, first-served basis. Each stockholder may be asked to present valid picture identification such as a driver's license or passport and proof of stock ownership as of the record date. The use of cell phones, smartphones, pagers, recording and photographic equipment, and/or computers is not permitted in the meeting rooms at the Annual Meeting.

**Deadline for receipt of stockholder proposals for 2014 Annual Meeting of Stockholders.**

Any stockholder who meets the requirements of the proxy rules under the Securities Exchange Act of 1934, as amended (the Exchange Act), may submit to the Board of Directors proposals to be considered for submission to the stockholders at the 2014 Annual Meeting of Stockholders. In order to be considered for inclusion in the proxy material to be disseminated by the Board of Directors, your proposal must comply with the requirements of Rule 14a-8 under the Exchange Act and be submitted in writing by notice delivered or mailed by first-class United States mail, postage prepaid, to our Corporate Secretary at Intuitive Surgical, Inc., 1266 Kifer Road, Sunnyvale, California 94086 and must be received no later than November 7, 2013. Your notice must include:

your name and address and the text of the proposal to be introduced;

the number of shares of stock you hold of record, beneficially own and represent by proxy as of the date of your notice; and

a representation that you intend to appear in person or by proxy at the Annual Meeting to introduce the proposal specified in your notice.

The chairperson of the meeting may refuse to acknowledge the introduction of your proposal if it is not made in compliance with the foregoing procedures or the applicable provisions of our Bylaws. Our Bylaws also provide for separate notice procedures to recommend a person for nomination as a director or to propose business to be considered by stockholders at a meeting outside the processes of Rule 14a-8. To be considered timely under these provisions, the stockholder's notice must be received by our Corporate Secretary at our principal executive offices at the address set forth below no earlier than December 26, 2013 and no later than January 25, 2014. If the date of our 2014 Annual Meeting is more than 30 days before or more than 60 days after April 25, 2014, the stockholder's notice must be received by not later than the 90 day prior to such annual meeting or, if later, the

10<sup>th</sup> day following the day on which public announcement of the date of such annual meeting was first made. A stockholder providing such notice must also further update and supplement such notice so that the information provided or required to be provided is true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement must be received by our Corporate Secretary at our principal executive offices not later than 5 business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than 8 business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). Our Bylaws also specify requirements as to the form and content of a stockholder's notice. We recommend that any stockholder wishing to make a nomination for director or to bring any other item before an annual meeting, other than proposals intended to be included in the proxy materials pursuant to Rule 14a-8, review a copy of our Bylaws, as amended and restated to date, which can be found at <http://www.intuitivesurgical.com> or, without charge, from our Corporate Secretary at the address below:

Intuitive Surgical, Inc.

Attn: Corporate Secretary

1266 Kifer Road

Sunnyvale, CA 94086-5304

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## DIRECTORS AND CORPORATE GOVERNANCE

### General Information

The Board of Directors has nine authorized seats. Three directors are to be elected at the Annual Meeting to serve a one-year term expiring at the 2014 Annual Meeting of Stockholders or until a successor has been elected and qualified. The remaining six directors will continue to serve their respective terms. At the 2012 Annual Meeting of Stockholders, the Company's stockholders approved to eliminate the classified structure of the Board and provide for the annual election of directors beginning with the Annual Meeting. The elimination of the classified structure will be phased in over a three-year period beginning with the Annual Meeting. The directors elected at the 2012 Annual Meeting of Stockholders will serve the remainder of their three-year terms expiring at the 2015 Annual Meeting of Stockholders, the directors elected at the 2011 Annual Meeting of Stockholders will serve the remainder of their three-year terms expiring at the 2014 Annual Meeting of Stockholders and the directors elected at the 2010 Annual Meeting of Stockholders will serve the remainder of their three-year terms expiring at the Annual Meeting.

Our Bylaws provide for a majority voting standard in uncontested elections of directors. As such, in an election where the number of nominees for director does not exceed the number of directors to be elected, a nominee for director will be elected to the Board of Directors if the number of shares voted for the nominee exceeds the number of shares voted against the nominee. The required quorum for a meeting of the Company's stockholders is a majority of the outstanding shares of common stock entitled to vote at the meeting. The majority voting standard would not apply, however, if the number of nominees for director exceeds the number of directors to be elected. In that case, the nominees receiving the highest number of affirmative votes of the shares entitled to vote at the meeting would be elected.

The majority voting standard will apply to the election taking place at the meeting. Consequently, in order to be elected, a nominee must receive more for votes than against votes. Proxies may not be voted for more than the three nominees, and stockholders may not cumulate votes in the election of directors. In the event any nominee is unable or declines to serve as a director at the time of the meeting, the proxies will be voted for any nominee, if any, who may be designated by the Board of Directors to fill the vacancy. As of the date of this Proxy Statement, the Board of Directors is not aware that any nominee is unable or will decline to serve as a director.

Our Board is currently composed of a group of leaders with broad and diverse experience in many fields, including: management of large global enterprises; technology and innovation leadership; healthcare; financial services; legal and compliance; and corporate governance. In these positions, they have also gained significant and diverse management experience, including industry knowledge, strategic and financial planning, public company financial reporting, compliance, risk management and leadership development. Many of the directors also have experience serving as executive officers, or on board of directors and board committees of other public companies, and have an understanding of corporate governance practices and trends. Other directors have significant academic and research experience and bring unique perspectives to the Board. The biographies below describes the skills, qualities, attributes and experiences of each of the nominees that led the Board to determine that it is appropriate to nominate these directors.

The Governance and Nominating Committee of the Board and the Board believe the skills, qualities, attributes and experiences of its current directors and director nominees provide the Company with business acumen and a diverse range of perspectives to engage each other and management to effectively address the evolving needs of the Company and represent the best interests of the Company's stockholders.

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The names of the nominees and directors, their ages as of February 15, 2013 and certain other information about them are set forth below:

Name of Director	Age	Principal Occupation	Director Since
<b>Directors with terms expiring at the 2013 Annual Meeting of Stockholders:</b>			
Amal M. Johnson	60	Executive Chairman of the Board, Author-IT, Inc.	2010
Eric H. Halvorson	63	Attorney in practice	2003
Alan J. Levy, Ph.D.	75	Chief Executive Officer, Incline Therapeutics, Inc.	2000
<b>Directors with terms expiring at the 2014 Annual Meeting of Stockholders:</b>			
Craig H. Barratt, Ph.D.	50	Former President of Qualcomm Atheros, Inc.	2011
Floyd D. Loop, M.D.	76	Former Chief Executive Officer, The Cleveland Clinic Foundation	2005
George Stalk Jr.	62	Senior Advisor, The Boston Consulting Group	2007
<b>Directors with terms expiring at the 2015 Annual Meeting of Stockholders:</b>			
Gary S. Guthart, Ph.D.	47	President and Chief Executive Officer, Intuitive Surgical, Inc.	2009
Mark J. Rubash	55	Chief Financial Officer, Heartflow, Inc.	2007
Lonnie M. Smith	68	Chairman of the Board and Former Chief Executive Officer, Intuitive Surgical, Inc.	1997

The principal occupations and positions and directorships for at least the past five years of our directors and director nominees, as well as certain information regarding their individual experience, qualifications, attributes and skills that led our Board of Directors to conclude that they should serve on the Board, are described below. There are no family relationships among any of our directors or executive officers.

### Directors Continuing in Office until the 2014 Annual Meeting of Stockholders

**Craig H. Barratt, Ph.D.** served as President of Qualcomm Atheros, the networking and connectivity subsidiary of Qualcomm Inc., a mobile technology company, from May 2011 to February 2013. He served as President and Chief Executive Officer and director of Atheros Communications, Inc., a fabless semiconductor company, from 2003 until its 2011 acquisition by Qualcomm. Prior to joining Atheros as Vice President of Technology in 2002, Dr. Barratt held a number of positions at ArrayComm, Inc., a company specializing in multi-antenna signal processing. Dr. Barratt holds Ph.D. and Master of Science degrees from Stanford University, as well as a Bachelor of Engineering degree in electrical engineering and a Bachelor of Science degree in pure mathematics and physics from the University of Sydney in Australia. Dr. Barratt is a co-inventor of a number of U.S. patents in fields including wireless communications and medical imaging and has co-authored a book on linear controller design.

Dr. Barratt's qualifications to serve on our Board include his leadership of a high growth and high technology company.

**Dr. Floyd D. Loop** has been a member of our Board of Directors since 2005. Dr. Loop served at The Cleveland Clinic Foundation for 35 years, holding leadership positions including Chairman of the Department of Thoracic and Cardiovascular Surgery, Chief Executive Officer and Chairman of the Board of Governors (1989-2004). Dr. Loop and his colleagues at the Cleveland Clinic were responsible for developing the use of arterial conduits in coronary artery surgery, for innovations in valve repair and for pioneering technical improvements for re-operations. Dr. Loop has served as the President of the American Association for Thoracic Surgery, as a Director of the American Board of Thoracic Surgery, and as a member of the Medicare Payment

Advisory Commission. He has received Honorary Doctor of Science degrees from Cleveland State University, St. Louis University and Purdue University. Dr. Loop is an internationally recognized cardiovascular surgeon, a recipient of the American Heart Association Citation for International Service and the American College of Cardiology Cummings Humanitarian Award. Dr. Loop received his undergraduate degree from Purdue University and his M.D. from The George Washington University, Washington, D.C. Dr. Loop currently serves on the public board of directors of Tenet Healthcare Corporation and other private corporate boards. In 2009, his book *Leadership and Medicine* was published.

Dr. Loop provides the Board with his experience in the healthcare industry and prior surgical practice.

**George Stalk Jr.** is currently a Senior Advisor and Fellow at The Boston Consulting Group (BCG) in the Toronto Office. Prior to that, until December 2008, Mr. Stalk served as a Senior Partner and Fellow at BCG. Mr. Stalk started with BCG in Boston in 1978 and has been with the firm's Tokyo and Chicago offices as well. Mr. Stalk is also an Adjunct Professor of Strategy at the Rotman School of Business-University of Toronto and a Senior Partner at Banyan Family Business Advisors. Mr. Stalk received a B.S. in Engineering Mechanics from the University of Michigan, an M.S. in Aeronautics and Astronautics from Massachusetts Institute of Technology and an M.B.A. from Harvard Business School. Mr. Stalk has led BCG's worldwide innovation efforts and co-authored several best-selling books on business strategy.

Mr. Stalk's qualifications to serve on our Board include his financial expertise, strategy, international consulting experience with a variety of companies and experience in the oversight of risk management.

#### **Directors Continuing in Office until the 2015 Annual Meeting of Stockholders**

**Gary S. Guthart, Ph.D.** joined Intuitive Surgical in April 1996. Effective January 2010, Dr. Guthart was appointed as Chief Executive Officer. In July 2007, he was promoted to President. Prior to that, in February 2006, Dr. Guthart assumed the role of Chief Operating Officer. Prior to joining Intuitive, Dr. Guthart was part of the core team developing foundation technology for computer enhanced-surgery at SRI International (formerly Stanford Research Institute). Dr. Guthart is currently a member of the Board of Directors of Affymetrix, Inc. He received a B.S. in Engineering from the University of California, Berkeley and an M.S. and a Ph.D. in Engineering Science from the California Institute of Technology.

Dr. Guthart brings to the Board business, operating, financial and scientific experience. His service as the CEO of Intuitive enables the Board to perform its oversight function with the benefits of management's perspectives on the business.

**Mark J. Rubash** joined our Board in October 2007. Mr. Rubash is the Chief Financial Officer at Heartflow, Inc., a privately-held medical diagnostic services company, which he joined in March 2012. Prior to Heartflow, Inc., Mr. Rubash was the Chief Financial Officer at Shutterfly, Inc., an Internet-based social expression and personal publishing company. Prior to joining Shutterfly in November 2007, Mr. Rubash was the Chief Financial Officer of Rearden Commerce, an eCommerce platform company, from August 2007 to November 2007 and previous to that, Mr. Rubash was a Senior Vice President at Yahoo! Inc. from February 2007 to August 2007. Prior to joining Yahoo!, Mr. Rubash held various senior positions at eBay Inc. from February 2001 to July 2005. Mr. Rubash was also previously an audit partner at PriceWaterhouseCoopers, where he was most recently the Global Leader for their Internet Industry Practice and Practice Leader for their Silicon Valley Software Industry Practice. Mr. Rubash received his B.S. in Accounting from California State University Sacramento. Mr. Rubash is currently a member of the Board of Directors and Chairman of the Audit Committee of Line 6 Corporation, a privately-held music products manufacturer and a member of the Board of Directors of Iron Planet, Inc., an online auction company for construction and agricultural equipment.

Mr. Rubash's qualifications to serve on our Board include his experience with public and financial accounting matters and risk management.

**Lonnie M. Smith** has served on our Board since he joined Intuitive Surgical as Chief Executive Officer in June 1997 from Hillenbrand Industries, where he was Senior Executive Vice President. Mr. Smith served as Chief Executive Officer of Intuitive Surgical from June 1997 to June 2010 and as an Executive Officer from January 2010 to January 2013. Mr. Smith joined Hillenbrand in 1978 and during his tenure he was also a member of the Executive Committee, the Office of the President and the Board of Directors. Mr. Smith has also held positions with The Boston Consulting Group and IBM Corporation. Mr. Smith received his B.S.E.E. from Utah State University and an M.B.A. from Harvard Business School. In January 2010, Mr. Smith resigned as the Chief Executive Officer of Intuitive Surgical. Mr. Smith remains as the Chairman of the Board of the Company. Mr. Smith also currently serves on the boards of directors of several private companies.

Having been the CEO of the Company until 2009, Mr. Smith brings institutional knowledge of the Company's business, structure, history and culture to the Board and the Chairman position.

#### **Directors Nominees for Election at the Annual Meeting for a One-Year Term expiring at the 2014 Annual Meeting of Stockholders**

**Amal M. Johnson** has been a member of our Board of Directors since April 2010.

Ms. Johnson is currently the Executive Chairman of Author-IT Inc., a Software as a Service private company that provides a platform for creating, maintaining, and distributing single-sourced technical content. Prior to joining Author-IT, Ms. Johnson led MarketTools, software and Services Company as CEO from 2005 to 2008 then as Chairman until the company was acquired in January 2012. Prior to MarketTools, Ms. Johnson was a general partner at Lightspeed Venture Partners, focusing on enterprise software and infrastructure, from March 1999 to March 2004. Previously, Ms. Johnson was President of Baan Supply Chain Solutions, President of Baan Affiliates, and President of Baan Americas, from October 1994 to January 1999. Prior to that, Ms. Johnson served as President of ASK Manufacturing Systems from August 1993 to July 1994 and held executive positions at IBM from 1977 to June 1993.

Ms. Johnson also serves on the Board of Directors of Mellanox Technologies, Ltd. Ms. Johnson holds a Bachelor of Arts in Mathematics from Montclair State University and studied Computer science at Stevens Institute of Technology graduate school of engineering.

Ms. Johnson brings to the Board her leadership and operational experience, including service as the Chairman of the Board of Directors and Chief Executive Officer of a technology company.

**Eric H. Halvorson** has been a member of our Board of Directors since our acquisition of Computer Motion in June 2003. Mr. Halvorson joined Computer Motion in July 2002 as a member of its Board of Directors. Mr. Halvorson is currently engaged in the practice of law. Mr. Halvorson was President and Chief Operating Officer of Salem Communications Corporation from 2007 to 2008. He was Executive Vice President and Chief Operating Officer of Salem Communications Corporation from 1995 to 2000. Prior to becoming Chief Operating Officer, he was the company's Vice President and General Counsel for 10 years. Mr. Halvorson served on the Board of Directors of Salem Communications Corporation from 1988 to 2008. From 2000 to 2003, 2005 to 2007 and 2009 to 2011, he was a Visiting Professor of Business Law and Accounting and Executive in Residence at Pepperdine University and an Adjunct Professor of Law at the Pepperdine University School of Law. From June 2003 to February 2005, Mr. Halvorson served as President and Chief Executive Officer of The Thomas Kinkadee Company. Mr. Halvorson was a partner at Godfrey and Kahn, a law firm based in Milwaukee, Wisconsin from 1976 until 1985. Mr. Halvorson holds a B.S. in Accounting from Bob Jones University and a J.D. from Duke University School of Law. Mr. Halvorson currently serves on the board of directors of Pharmacyclics, Inc.

Mr. Halvorson brings to the Board of Directors financial acumen and experience in business leadership roles.



**Alan J. Levy, Ph.D.** has been a Venture Partner at Frazier Healthcare Ventures since 2007. Currently, he is the Chief Executive Officer of Incline Therapeutics, Inc., a novel drug/device company. He served as Chairman of the Board of Directors of Northstar Neuroscience, Inc., a medical device company he co-founded, from 2007 to 2009. Prior to that, he was the President and Chief Executive Officer of Northstar Neuroscience, Inc. from 1999 to 2007. From 1993 to 1998, Dr. Levy served as President and Chief Executive Officer of Heartstream, Inc., a medical device company that was acquired by Hewlett-Packard in 1998. Prior to joining Heartstream, he was President of Heart Technology, Inc., a medical device company that was acquired by Boston Scientific in 1995. Before joining Heart Technology, Dr. Levy was Vice President of Research and New Business Development and a member of the board of Ethicon, a division of Johnson & Johnson. Dr. Levy holds a B.S. in Chemistry from City University of New York and a Ph.D. in Organic Chemistry from Purdue University. Dr. Levy currently serves as a director of several private companies and non-for-profit organizations.

Dr. Levy's qualifications to serve on our Board include his service as the Chief Executive Officer for two medical device companies and an understanding of physicians and other health care providers who are central to the use and development of our products.

#### **Board Size**

The number of directors constituting the full Board is currently set at nine. The Board of Directors will evaluate the appropriateness of the size of the Board from time to time. In establishing its size, the Board, as recommended by the Governance and Nominating Committee, considers a number of factors, including (i) resignations and retirements from the current Board; (ii) the availability of appropriate and qualified candidates; (iii) balancing the desire of having a small enough Board to facilitate deliberations with, at the same time, having a large enough Board to have the diversity of knowledge, experience, skills and expertise so that the Board and its committees can effectively perform their responsibilities in overseeing the Company's business and (iv) the goal of having an appropriate mix of inside and independent directors.

Our Board is currently composed of a group of leaders with broad and diverse experience in many fields, including: management of large global enterprises; technology and innovation leadership healthcare; financial services; legal and compliance; and corporate governance. Our Board members have acquired these diverse skills through their accomplished careers and their service as directors of a wide range of other public and private companies.

#### **Nomination Process**

The Governance and Nominating Committee identifies director nominees by reviewing the desired experience, mix of skills and other qualities to assure appropriate Board composition, taking into consideration the current Board members and the specific needs of the Company and the Board.

The Governance and Nominating Committee will consider nominees recommended by stockholders, and any such recommendations should be sent to our Corporate Secretary in writing at our executive offices as identified in this Proxy Statement. Such recommendations should comply with the notice requirements set forth in our Bylaws and include the following information, among other information required under our Bylaws:

the name and address of such nominating stockholder and the class or series and number of shares of securities of our Company that are, directly or indirectly, owned of record or beneficially owned by such stockholder;

whether the nominating stockholder intends to deliver a proxy statement and form of proxy to elect such nominee;

interests of the nominating stockholder required to be disclosed under our Bylaws;

all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required in a contested election (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any nominating stockholder, on the one hand, and each proposed nominee, his or her respective affiliates and associates, on the other hand; and

a completed and signed questionnaire, representation and agreement as provided in our Bylaws.

We will also request such other information as may reasonably be required to determine the eligibility of such proposed nominee to serve as an independent director or that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee. Any recommendations received from stockholders will be evaluated in the same manner as potential nominees suggested by board members, management or other parties.

The Governance and Nominating Committee evaluates director candidates based upon a number of criteria, including:

the desired experience, mix of skills and other qualities to assure appropriate Board composition, taking into account the current Board members and the specific needs of the Company and the Board;

the experience, knowledge, skills and expertise of candidates, which may include experience in management, finance, marketing and accounting, across a broad range of industries with particular emphasis on healthcare and medical device industries, along with experience operating at a policy-making level in an appropriate business, financial, governmental, educational, non-profit, technological or global field;

diversity of backgrounds and perspectives, including those backgrounds and perspectives with respect to business experience, professional expertise, age, gender and ethnic background;

personal and professional integrity, character and business judgment of candidates; and

whether candidates are independent, including the independence requirements of the SEC and the NASDAQ Stock Market.

The Governance and Nominating Committee will assess the effectiveness of its approach to consideration of Board candidates as part of its evaluation of the Board's composition to ensure that the Board reflects the knowledge, experience, skills, expertise and diversity required for the Board to fulfill its duties.

### **Board Responsibilities**

The Board's primary responsibility is to seek to maximize long-term stockholder value. The Board selects the CEO of the Company, monitors management's and the Company's performance, and provides advice and counsel to management. Among other things, the Board at least annually reviews the Company's long-term strategy, longer-term business plan and an annual budget for the Company. The Board also reviews and approves transactions in accordance with guidelines that the Board may adopt from time to time. In fulfilling the Board's responsibilities, directors have full access to the Company's management, external auditors and outside advisors. With respect to the Board's role in risk oversight of the Company, the Board of Directors discusses the Company's risk exposures and risk management of various parts of the business, including appropriate guidelines and policies to minimize business risks and major financial risks and the steps management has undertaken to control them.

### **Board Leadership**

The Company is focused on its corporate governance practices and values independent board oversight as an essential component of strong corporate performance to enhance stockholder value. Our commitment to independent oversight is demonstrated by the fact that all of our directors, except our Chairman, and President



and Chief Executive Officer, are independent. In addition, all of the members of our Board's committees are independent. Our Board of Directors acts independently of management and regularly holds independent director sessions of the Board without members of management present.

Mr. Smith is the Chairman of our Board of Directors and Dr. Guthart is our President and Chief Executive Officer. Dr. Guthart is also a member of the Board of Directors. Our Board of Directors has determined that the separation of the roles of Chairman of the Board and Chief Executive Officer is appropriate at this time as it allows our Chief Executive Officer to focus primarily on management and strategy responsibilities, while allowing our Chairman to focus on leadership of the Board, providing feedback and advice to the Chief Executive Officer and providing a channel of communication between the Board members and the Chief Executive Officer. The Chairman of the Board presides over all Board meetings and works with the Chief Executive Officer to develop agendas for Board meetings. The Chairman advises the Chief Executive Officer and other members of senior management on business strategy and leadership development. He also works with the Board to drive decisions about particular strategies and policies and, in concert with the independent Board committees, facilitates a performance evaluation process of the Board. We do not have a lead independent director. Our Board believes that the current board leadership structure is best for the Company and its stockholders at this time.

### Board Committees

Our Board of Directors has established an Audit Committee, a Compensation Committee and a Governance and Nominating Committee. Our Board of Directors and its committees set schedules to meet throughout the year and also can hold special meetings and act by written consent from time to time, as appropriate. Our Board of Directors has delegated various responsibilities and authority to its committees as generally described below. The committees will regularly report on their activities and actions to the full Board of Directors. Each committee of our Board of Directors has a written charter approved by our Board of Directors which is available on our website at <http://www.intuitivesurgical.com>.

During 2012, our Board of Directors held four meetings and each director attended all of those meetings. Members of the Board and its committees also consulted informally with management from time to time and acted at various times by written consent without a meeting during 2012.

The following table reflects the current membership of each Board committee:

Name	Committee Membership		
	Audit Committee	Governance and Nominating Committee	Compensation Committee
Craig H. Barratt, Ph.D.		ü	
Eric H. Halvorson	ü		Chair
Amal M. Johnson			ü
Alan J. Levy, Ph.D.		Chair	ü
Floyd D. Loop, M.D.		ü	
Mark J. Rubash	Chair		
George Stalk Jr.	ü		

### Audit Committee

The Audit Committee assists the full Board of Directors in its general oversight of our financial reporting, internal controls, and audit functions, and is directly responsible for the appointment, compensation and oversight of the work of our independent registered public accounting firm. The Audit Committee reviews and discusses with management and our independent registered public accounting firm the annual audited and

quarterly financial statements (including the disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations), reviews the integrity of the financial reporting processes, both internal and external, reviews the qualifications, performance and independence of our registered public accounting firm, and prepares the Audit Committee Report included in our Proxy Statement in accordance with rules and regulations of the SEC. The Audit Committee operates under a charter and a copy of the charter can be found on our website at <http://www.intuitivesurgical.com>.

All of the Audit Committee members meet the existing independence and experience requirements of the NASDAQ Stock Market and the SEC. In 2012, the Audit Committee met eight times. Two members of the Audit Committee attended all eight meetings and one member of the Audit Committee attended seven of those meetings. The Board of Directors has determined that Mr. Rubash is an Audit Committee Financial Expert, as defined in Item 407(d)(5)(ii) of Regulation S-K. The Audit Committee has engaged Ernst & Young LLP as our independent registered public accounting firm for fiscal year 2013.

#### **Governance and Nominating Committee**

The Governance and Nominating Committee is responsible for matters relating to the corporate governance of our Company and the nomination of members of the Board and committees thereof. All of the Governance and Nominating Committee members meet the existing independence requirements of the NASDAQ Stock Market. In 2012, the Governance and Nominating Committee met three times and all then-current members of the Governance and Nominating Committee attended all of those meetings.

#### **Compensation Committee**

The Compensation Committee reviews and approves all compensation programs applicable to executive officers of the Company, including salaries, bonuses and stock compensation. The Compensation Committee reviews and approves corporate goals and objectives relevant to the compensation of the Company's CEO, evaluates the performance of the CEO in light of those goals and objectives, and sets the CEO's compensation level based on this evaluation. The Compensation Committee approves any new compensation plan or any material change to an existing compensation plan whether or not subject to stockholder approval and makes recommendations to the Board with respect to the Company's incentive compensation plans and equity-based plans subject to stockholder approval. The Compensation Committee reviews and discusses with management the disclosure regarding executive compensation and inclusion of the Compensation Discussion and Analysis (CD&A) included in our annual proxy statements.

All of the Compensation Committee members meet the existing independence requirements of the NASDAQ Stock Market. In 2012, the Compensation Committee met two times and all members of the Compensation Committee attended all of those meetings. The Compensation Committee operates under a charter that was amended during July 2011 and a copy of the charter can be found on our website at <http://www.intuitivesurgical.com>.

#### **Compensation Committee Interlocks and Insider Participation**

During 2012, the Compensation Committee consisted of Eric H. Halvorson, Amal M. Johnson and Alan J. Levy, Ph.D., none of whom is a present or former officer or employee of our Company. In addition, during 2012, none of our officers had an interlock relationship, as that term is defined by the SEC, to report.

#### **Attendance at the Annual Meeting**

We encourage, but do not require, our Board members to attend the annual meeting of stockholders. All members of the Board of Directors attended our 2012 Annual Meeting of Stockholders.

## COMPENSATION FOR DIRECTORS

### Director Compensation Table

The following Director Compensation Table sets forth summary information concerning the compensation paid to our directors who are not NEOs for the year ended December 31, 2012 for services to our Company.

Name (1)	Fees earned or paid in cash (\$)	Option Awards (\$) (2)	Total (\$)
Craig H. Barratt, Ph.D.	53,000	337,125	390,125
Eric H. Halvorson	65,000	337,125	402,125
Amal M. Johnson	53,000	337,125	390,125
Alan J. Levy, Ph.D.	63,000	337,125	400,125
Floyd D. Loop, M.D.	53,000	337,125	390,125
Mark J. Rubash	65,000	337,125	402,125
George Stalk Jr.	55,000	337,125	392,125
Lonnie M. Smith	100,000	725,788	825,788

- (1) Dr. Barratt, Mr. Halvorson, Ms. Johnson, Dr. Levy, Dr. Loop, Mr. Rubash and Mr. Stalk are non-employee directors of the Company. Mr. Smith is the Chairman of the Board and prior to January 15, 2013 was an executive officer of the Company.
- (2) The amounts in this column represent the grant date fair value of options granted in 2012, determined in accordance with Accounting Standards Codification Topic 718 (ASC 718). Each continuing non-employee director received an option to purchase 2,500 shares of the Company's common stock, granted on April 19, 2012 with an exercise price of \$579.24 per share, based on the NASDAQ close price on the day prior to the grant date, pursuant to the 2000 Non-Employee Directors' Stock Option Plan (the Directors' Plan). Mr. Smith received options to purchase 2,500 shares and 2,500 shares of the Company's common stock, granted on February 15, 2012 and August 15, 2012, respectively, with an exercise price of \$505.23 and \$517.31 per share based on the NASDAQ close price on the day prior to the grant date pursuant to the 2010 Plan, respectively. See Note 8 of the Notes to the Consolidated Financial Statements contained in our Annual Report on Form 10-K filed on February 4, 2013 for a discussion of all assumptions made by us in the valuation of the equity awards.

The table below sets forth the aggregate number of shares of our common stock subject to options outstanding and exercisable as of December 31, 2012.

Name	Number of Shares of Common Stock Underlying Outstanding Options	Number of Shares of Common Stock Options Exercisable
Craig H. Baratt, Ph.D.	10,000	4,166
Eric H. Halvorson	8,438	5,688
Amal M. Johnson	12,750	9,417
Alan J. Levy, Ph.D.	13,438	10,938
Floyd D. Loop, M.D.	22,688	20,188
Mark J. Rubash	23,438	20,938
George Stalk Jr.	8,438	5,938
Lonnie M. Smith	100,328	85,911

The Company reimburses its non-employee directors for all reasonable out-of-pocket expenses incurred in the performance of their duties as directors of the Company. Employee directors are not compensated for Board services in addition to their regular employee compensation.

*Annual cash compensation:* During fiscal 2012, the Board received the following cash compensation: (1) annual retainer for each member of the Board of \$50,000; (2) additional retainers for services as a committee chairperson (\$15,000 for Audit Committee, \$10,000 for all other committees); and (3) additional retainers for services as a committee member (\$5,000 for Audit Committee, \$3,000 for all other committees).

*Equity Compensation:* The terms of the Directors' Plan provide for automatic non-discretionary grants of stock options to our non-employee directors. Non-employee members of the Board newly elected or appointed to the Board are, on the date elected or appointed to the Board, granted an initial option to purchase 6,000 shares of the Company's common stock with one-third of the shares underlying the option vesting after one year from the date of grant and 1/36<sup>th</sup> of the shares underlying the option vesting monthly thereafter. Non-employee members of the Board of Directors who have served at least six months as of the date of the Company's Annual Meeting will be granted, on the date of the Company's Annual Meeting, an option grant to purchase 2,125 shares of common stock with the exception of the Chairman of the Board. The Chairman of the Board is eligible to receive an annual option grant to purchase 3,000 shares of the Company's common stock. The annual option grant fully vests on the first anniversary of the date of grant; provided, however, that vesting will cease on termination of a director's service to the Company.

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**EXECUTIVE OFFICERS OF THE COMPANY**

The Company's executive officers as of December 31, 2012 and their ages as of February 15, 2013, are as follows:

Name	Age	Position
Gary S. Guthart, Ph.D.	47	President and Chief Executive Officer
Lonnie M. Smith	68	Executive Officer and Chairman of the Board
Jerome J. McNamara	55	Executive Vice President, Worldwide Sales and Marketing
Salvatore J. Brogna	58	Senior Vice President, Product Development
Augusto V. Castello	55	Senior Vice President, Product Operations
Mark J. Meltzer	63	Senior Vice President and General Counsel
Marshall L. Mohr	57	Senior Vice President and Chief Financial Officer
Colin Morales	49	Senior Vice President, Customer Support Group
David J. Rosa	45	Senior Vice President, Emerging Procedures & Technology

The principal occupations and positions for at least the past five years of the executive officers named above are as follows:

**Gary S. Guthart, Ph.D.** Please see Directors and Corporate Governance section above.

**Lonnie M. Smith.** Please see Directors and Corporate Governance section above.

**Jerome J. McNamara** joined Intuitive Surgical in April 1999. In July 2007, Mr. McNamara was promoted to Executive Vice President, Worldwide Sales and Marketing. Prior to joining Intuitive Surgical, Mr. McNamara was the Vice President, Marketing at Valleylab. Prior to Valleylab, Mr. McNamara worked at United States Surgical Corporation for nearly 17 years where he held positions in senior sales management, marketing and national accounts. Mr. McNamara graduated from the University of Pennsylvania with a B.A. in Biology.

**Salvatore J. Brogna** joined Intuitive Surgical as Director, Mechanical Engineering, in 1999 and was promoted to Vice President, Engineering in 2005. In 2010, Mr. Brogna was promoted to the position of Senior Vice President, Product Development. Prior to joining Intuitive, Mr. Brogna led design and development of complex robotic systems at Adept Technology and at Unimation. Mr. Brogna is a graduate of Clarkson University where he earned a BS and a MS in Mechanical Engineering.

**Augusto V. Castello** joined Intuitive Surgical in May of 2002 from US Surgical, where he was General Manager for their Puerto Rico manufacturing operations from 1998 to 2002. He was promoted to Senior Vice President, Product Operations in 2009. During his 10 years at US Surgical, Mr. Castello acted in the capacity of Engineering Director, Materials Director, Manufacturing Director and General Manager. Prior to US Surgical, Mr. Castello acted as Operations Manager for Clayton Industries and Engineering Manager for Ormco/Sybron. Mr. Castello received a BSME from California State University at Long Beach.

**Mark J. Meltzer** joined Intuitive Surgical in December 2007. Prior to joining Intuitive Surgical, Mr. Meltzer served as General Counsel of FoxHollow Technologies Inc. from October 2004. Prior to FoxHollow, Mr. Meltzer served as General Counsel for Epicor Medical Inc. and Ventritex Inc. Mr. Meltzer graduated cum laude from UC Berkeley with a B.S. in electrical engineering. He received his J.D. from UC Hastings where he served on the law review. Mr. Meltzer, a registered patent attorney, was appointed as a special master in federal court where he assisted in the evaluation and administration of complex patent cases. Mr. Meltzer has tried cases to juries and has argued before the Ninth Circuit Court of Appeals. His pro bono work has included the representation of indigents and non-profits before courts and administrative agencies and volunteer service in federal anti-poverty programs.



**Marshall L. Mohr** joined Intuitive Surgical in March 2006. Prior to that, Mr. Mohr was Vice President and Chief Financial Officer of Adaptec, Inc. Prior to joining Adaptec in July 2003, Mr. Mohr was an Audit Partner with PricewaterhouseCoopers where he was most recently the Managing Partner of the firm's west region technology industry group and led its Silicon Valley accounting and audit advisory practice. Mr. Mohr received his B.B.A. in Accounting and Finance from Western Michigan University. Mr. Mohr serves on the corporate board of Plantronics, Inc and Pacific Biosciences of California, Inc.

**Colin Morales** joined Intuitive Surgical in March 1999 as Director of Field Service. He was promoted to Vice President of the Customer Support Group in July 2005. In 2010, Mr. Morales was promoted to the position of Senior Vice President, Customer Support and is responsible for Field Service, Products Support, Order Management and Customer Service Operations. Prior to joining Intuitive, Mr. Morales was with Acuson for more than 13 years, where he held various management positions in field and customer service. Mr. Morales received his associate's degree from The DeVry Institute of Technology in Phoenix, Arizona.

**David J. Rosa** joined Intuitive Surgical in March 1996 and has held leadership positions in engineering, clinical development, marketing and product development. In 2011, Mr. Rosa was promoted to the position of Senior Vice President, Emerging Procedures & Technology. Prior to joining Intuitive, Mr. Rosa contributed to the development of trans-esophageal transducers for Acuson Corporation. Mr. Rosa graduated magna cum laude with a BSME from California Polytechnic University at San Luis Obispo. He also holds a MSME from Stanford University.

**EXECUTIVE COMPENSATION**

**Compensation Committee Report**

*The following report of the Compensation Committee shall not be deemed to be soliciting material or to otherwise be considered filed with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933 (the Securities Act) or the Exchange Act except to the extent that the Company specifically incorporates it by reference into such filing.*

The Compensation Committee has reviewed and discussed with management the disclosures contained in the section entitled Compensation Discussion and Analysis of this Proxy Statement. Based upon this review and discussion, the Compensation Committee recommended to the Board that the section entitled Compensation Discussion and Analysis be included in this Proxy Statement for the Annual Meeting.

**Members of the Compensation Committee**

Eric H. Halvorson (Chairman)

Amal M. Johnson

Alan J. Levy, Ph.D.

*This Proxy Statement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements relate to expectations concerning matters that are not historical facts. Words such as projects, believes, anticipates, plans, expects, intends, may, will, could, should, would, and similar words and expressions are intended to identify forward-looking statements. These forward-looking statements include, but are not limited to, statements related to risks associated with our compensation programs. Readers are cautioned that these forward-looking statements are based on current expectation and are subject to risks, uncertainties, and assumptions that are difficult to predict. We undertake no obligation to revise or update any forward-looking statements for any reason.*

**Compensation Discussion and Analysis**

*The following discussion and analysis of compensation arrangements of our named executive officers for 2012 should be read together with the compensation tables and related disclosures set forth below. This discussion contains forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt may differ materially from currently planned programs as summarized in this discussion.*

This section explains the Company's executive compensation program as it relates to the following named executive officers (NEOs) as of December 31, 2012 whose compensation information is presented in the tables following this discussion in accordance with SEC rules:

Name	Position
Gary S. Guthart, Ph.D.	President and Chief Executive Officer
Jerome J. McNamara	Executive Vice President, Worldwide Sales and Marketing
Marshall L. Mohr	Senior Vice President and Chief Financial Officer
Mark J. Meltzer	Senior Vice President and General Counsel
David J. Rosa	Senior Vice President, Emerging Procedures & Technology

**Executive Summary**

The Company's goal for its executive compensation program is to attract and retain a talented, entrepreneurial and creative team of executives who will provide leadership for the Company's success in driving *da Vinci* Surgery to the broadest number of patients, and in turn driving stockholder value. The Company

seeks to accomplish this goal in a way that is aligned with the long-term interests of the Company's stockholders. The Compensation Committee oversees the executive compensation program and determines the compensation for the Company's executive officers. The Company believes the compensation program for the NEOs aligns the executives in helping the Company achieve strong financial performance.

**2012 Financial Highlights:**

<i>(Amounts in millions)</i>	Years Ended December 31,		
	2012	2011	Change
Revenue	\$ 2,178.8	\$ 1,757.3	24%
Income from operations	\$ 878.1	\$ 694.8	26%
Net income	\$ 656.6	\$ 495.1	33%
Net cash provided by operating activities	\$ 814.2	\$ 677.6	\$ 136.6
Cash, cash equivalents and investments	\$ 2,920.5	\$ 2,171.8	\$ 748.7
Repurchases and retirement of common stock	\$ 238.3	\$ 331.8	\$ (93.5)

In 2012, each NEO was a member of the Company's executive team. Each NEO is expected to contribute as a member of the executive team to the Company's overall success rather than merely achieve specific objectives within that officer's area of responsibility.

The Company continues to rely on long-term equity awards in the form of stock options to attract and retain an outstanding executive team and to ensure a strong connection between the executive compensation program and the long-term interests of the Company's stockholders. Stock options are granted to the NEOs annually.

The Company places less emphasis on total cash compensation than on long-term equity awards. Target bonuses under the Company's annual performance-based cash bonus program ( Corporate Incentive Plan or CIP ) for 2012 were set at 70% of base salary for the Chief Executive Officer and 50% of base salary for the other NEOs, except Mr. McNamara. Mr. McNamara is not eligible for the CIP; instead, Mr. McNamara's incentive plan is based on the Company's Commission Plan (the Commission Plan ) for sales executives. As noted below, these target bonus opportunities are lower than the range commonly provided by peer companies.

The CIP is funded based on a predetermined increase in our operating income goal, excluding non-cash stock compensation expense, and paid out to executives based on predetermined company performance goals. The company performance goals are related to market expansion, product development, manufacturing and quality, efficiency and cost performance and other areas directed at long-term stockholder value creation. Target and maximum levels are established for operating income and most performance goals which drive bonuses to be paid anywhere from 0% to 125% of the targets outlined above.

In 2012, the Company achieved the 125% operating income goal and most of the company performance goals resulting in the Compensation Committee awarding a net 2012 CIP payout at 111%. Mr. McNamara exceeded all of his sales and performance targets and the Compensation Committee awarded him a Commission Plan payout at 134% of his target. See The Role of Cash Compensation section below for more discussion on the CIP.

In 2012, each of the NEOs received an increase in base salary following a review of each NEO's performance, the Company's financial results and competitive environment. See Base Salaries and Base Salary Increases sections below for more discussion on the determination of NEO base salaries.

The first part of the Compensation Discussion and Analysis, titled Executive Compensation Philosophy, discusses in greater detail the Company's philosophy and approach to executive compensation. The second part of the Compensation Discussion and Analysis, entitled Compensation Decisions for 2012, discusses the Compensation Committee's compensation decisions for the NEOs in 2012.

## **Executive Compensation Philosophy**

### ***Goal of Executive Compensation Program***

The Company's goal for its executive compensation program is to attract and retain a talented, entrepreneurial and creative team of executives who will provide leadership for the Company's success in delivering *da Vinci* Surgery to the broadest number of patients who can benefit from it. The Company seeks to accomplish this goal in a way that is aligned with the long-term interests of the Company's stockholders.

### ***Determining Compensation for the Named Executive Officers***

*Team-Based Approach and Performance Expectations.* Each of the NEOs is a member of the Company's executive team. The compensation program for the NEOs rests on two principles. First, each executive officer must demonstrate exceptional personal performance in order to remain part of the executive team. The Company believes that executives who underperform should be removed from the executive team and have their compensation adjusted accordingly, or be dismissed from the Company. Second, each executive officer must contribute as a member of the team to the Company's overall success rather than merely achieve specific objectives within that officer's area of responsibility. Because of this team-based approach, the Company carefully considers the relative compensation levels among all members of the executive team. Accordingly, the Company's executive compensation program is designed to be internally consistent and equitable in order to further the Company's success and achieve the goal of the executive compensation program. The reasons for differences in the amounts awarded to each of the NEOs relate primarily to the experience, responsibilities and performance of each NEO and different market pay levels for each executive officer's function.

*Emphasis on Long-Term Equity Awards.* The Company relies on long-term equity awards in the form of time-vested stock options because the Company believes stock options are the most effective compensation element for attracting entrepreneurial, creative executives to align the interest of executives with stockholders, and to reward stockholder value creation. The number of shares subject to these awards is determined based on the contributions of the NEO during the prior year, an assessment of the NEO's ability to contribute to the Company in future periods and the retention goals of the Company. The emphasis on long-term equity awards also is designed to align the interests of the NEOs with the Company's stockholders by ensuring that executives have a significant portion of their potential compensation tied to long-term stock price performance.

*Discretion and Judgment of the Compensation Committee.* The Compensation Committee approves all compensation for the NEOs based on their performance, and Dr. Guthart's recommendations related to those NEOs that report to him. At the Compensation Committee's request, Dr. Guthart reviews with the Compensation Committee the performance of the NEOs. The Compensation Committee gives considerable weight to Dr. Guthart's evaluations of the other NEOs because of his direct knowledge of each executive officer's performance and contributions. The Compensation Committee, based on the evaluations completed by Dr. Guthart, then determines if the recommended changes in each officer's compensation are appropriate. Each year, the Compensation Committee reviews the performance of Dr. Guthart to determine changes in his compensation. All three Compensation Committee members are independent directors under the applicable NASDAQ and SEC rules.

In exercising its discretion to determine compensation, the Compensation Committee carefully considers the experience, responsibilities and performance of each NEO and the Company's overall financial performance. The Company recognizes that executive compensation practices are influenced by a wide range of complex factors, including changes in strategic goals, changing economic and industry conditions, accounting requirements and tax laws, and evolving governance trends. As a result, the Compensation Committee's discretion and judgment are critical to designing an executive compensation program that achieves the Company's goal while also addressing these factors.

The Compensation Committee approves the compensation and stock option grants for the NEOs other than the CEO. The Compensation Committee approves the compensation and stock option grants for the Chairman of the Board and the CEO, subject to the Board of Directors ratification.

*The Role of the Compensation Consultant.* In 2011, the Compensation Committee selected and directly retained the services of Compensia, an independent executive compensation consulting firm. Compensia completed a comprehensive analysis on executive compensation program. Our current practice is to review our executive compensation relative to peers every two years.

*The Role of Peer Companies.* While we do not believe that it is appropriate to establish compensation levels based solely on benchmarking, we believe that information regarding pay practices at other companies is nevertheless useful as we recognize that compensation practices must be competitive in the marketplace to enable the Company to attract and retain executives. Accordingly, the Compensation Committee approved the engagement of Compensia to assist with updating our peer group and assessing the competitiveness of our executive compensation program in 2011. Peer groups were used for three purposes:

Direct Peer Group

Primary comparison for all aspects of executive compensation

Broad Peer Group

Secondary reference point for executives matched to Direct Peer Group

Primary comparison for executives not matched to Direct Peers

Reference Peer Group

Data source for additional market perspective, in particular high-growth companies and labor market competitors  
Five selection criteria were used to establish our Direct Peer Group including:

1. Location: U.S.-based
2. Ownership: publicly traded
3. Industry: Medical Device or broader Life Science industry
4. Revenues of approximately 1/3 to 3x of Intuitive Surgical
5. Market capitalization of >2x revenues

In 2011, our Direct Peer Group consisted of the following companies:

C.R. Bard  
Edwards Lifesciences

IDEXX Laboratories  
Illumina

ResMed  
Sirona Dental Systems

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Haemonetics  
Hologic  
Hospira

Kinetic Concepts  
Life Technologies  
Medicis Pharmaceutical

Varian Medical Systems  
Waters Corp.  
Zimmer Holdings

In 2011, our Broad Peer Group included combined data for life sciences industry ( LSI ) and technology industry ( High-Tech ) market data provided by Radford. The dataset from the Radford Life Science Survey consisted of U.S.-based, public, non-subsiary life science companies with revenues of approximately 1/3 to 3x that of the Company and a market capitalization of at least 1.5x revenue. The dataset from the Radford Global Technology Survey consisted of U.S.-based, public, non-subsiary companies with revenues of approximately 1/3 to 3x that of the Company and a market capitalization of at least 1.5x revenue.

Finally, we created a Reference Peer Group to gain additional perspective on labor market competitors, certain of which are also high growth companies. In 2011, this peer group consisted of the following companies:

Apple  
C.R. Bard  
Boston Scientific  
Covidien

Google  
Johnson & Johnson  
Lam Research  
Medtronic

Smith & Nephew  
St. Jude Medical  
Stryker

The Compensation Committee reviews compensation practices at peer companies to inform the Committee's decision-making process so it can set total compensation levels that it believes are reasonably competitive. The Compensation Committee, however, does not set compensation components to meet specific benchmarks, such as targeting salaries above the median or equity compensation at the 75<sup>th</sup> percentile. Furthermore, the Compensation Committee believes that over-reliance on benchmarking can result in compensation that is unrelated to the value delivered by the NEOs.

*The Role of Stockholder Say-on-Pay Votes.* In 2012, the Company's stockholders approved our 2011 named executive compensation on an advisory basis, with an over 80% approval rate among the shares voted. The Compensation Committee continues to apply its principles and philosophy used in previous years in determining executive compensation. They will continue to consider stockholder concerns and feedback in the future. The Compensation Committee is continuously working to ensure that management's interests are aligned with our stockholders interests to support long-term value creation and will continue to consider the outcome of the Company's say-on-pay votes when making future compensation decisions for the NEOs.

#### ***Elements of the Compensation Program***

The Company's executive compensation program is simple in design. The compensation program for the NEOs includes:

*Long-term equity awards* in the form of stock options;

*Annual performance-based cash bonus awards*; and

*Base salaries.*

The NEOs are also eligible to participate in the Company's health and benefits programs, Employee Stock Purchase Plan and 401(k) Plan on the same basis as other employees.

#### ***The Role of Long-Term Equity Awards***

*Overview.* The Company believes that long-term equity awards in the form of stock options are an extremely important way to attract and retain a talented executive team and align the executives' interests with the Company's stockholders because executives only realize value from stock options when the Company's stock price increases. Accordingly, executive compensation is weighted considerably toward long-term equity awards rather than cash compensation. In 2012, long-term equity awards for the NEOs represented approximately 80% of the officers' target total compensation, which is illustrated in the following chart:

*Vesting Periods and Ten Year Option Terms Maximize Retention and Support Long-Term Focus.* The Compensation Committee approves all grants made under the 2009 Employment Commencement Incentive Plan which are issued to new hires once a month on the fifth business day of each month after their hire, at an exercise price equal to the closing fair market value of our stock on the grant date. The Compensation Committee reviews and approves annual option grants to the NEOs and other executives. The Compensation Committee approves the option grants to all other non-executive employees in aggregate and has delegated the authority to the CEO to allocate the individual option awards to these non-executive employees. Stock option awards to employees including the NEOs were granted bi-annually on February 15<sup>th</sup> and August 15<sup>th</sup>. The February 15<sup>th</sup> stock option awards have been granted with a four year vesting period, while the August 15<sup>th</sup> stock option awards have been granted with a 3.5 year vesting period. The Company believes granting awards with these vesting periods and ten year terms creates a substantial retention incentive and also encourages the NEOs to focus on the Company's long-term business objectives and long-term stock price performance. To determine the size of the stock option awards, the Compensation Committee first establishes a target compensation value to be delivered to the NEOs through long-term equity awards. In doing so, the Compensation Committee considers various factors, including the following:

The emphasis placed on equity in the mix of total compensation;

The officer's experience and performance;

The scope, responsibility and business impact of the NEO's position relative to other members of the executive team; and

The retention value of the total compensation package.

Once the target value has been established, the Compensation Committee determines the number of shares subject to the awards by reference to the current value of the Company's common stock and presents its recommendations to the Board of Directors for their approval.

We do not time the granting of our options with any favorable or unfavorable news released by the Company. The initial grants are based on the timing of date of hire of our new employees. Proximity of any awards to an earnings announcement or other market events is coincidental.



**Compensation Decisions for 2012*****Long-Term Equity Awards***

The Compensation Committee authorized the following equity grants on February 15, 2013 and in 2012 and 2011, for the NEOs based on its assessment of the factors discussed in the section titled "The Role of Long-Term Equity Awards" :

NEO	Options Granted (#)		
	2013 (1)	2012	2011
Gary S. Guthart	7,500	28,000	31,875
Jerome J. McNamara	7,000	22,500	11,250
Marshall L. Mohr	6,000	14,000	16,000
Mark J. Meltzer	6,000	14,000	16,000
David J. Rosa	6,000	14,000	16,000

- (1) As described above, options will be granted bi-annually on February 15<sup>th</sup> and August 15<sup>th</sup>. Although the number of options to be granted on August 15<sup>th</sup> will be determined at a future date, we anticipate that a like number to the February 15<sup>th</sup> grant will be granted. Please refer to the section "The Role of Long-Term Equity Awards" for more details on the vesting terms of these awards.

***The Role of Cash Compensation***

*Overview.* The Company reviews executive compensation as compared to our peer group every two years, the most recent review was performed in 2011. The Company believes that cash compensation is less effective than long-term equity awards in achieving the goal of the Company's executive compensation program. Accordingly, target cash compensation for the NEOs represented approximately 20% of the officers' target total compensation in 2011 and overall it is approximately at the 25th percentile of target cash compensation provided by peer companies, except for Mr. McNamara. The NEOs' cash compensation includes performance-based cash bonus awards and base salaries.

*Base Salaries.* The Compensation Committee determines base salaries for each NEO based on the executive officer's role and responsibilities, a review of any applicable market data and individual job performance. The Company believes that base salaries are less important than long term equity awards in achieving the goal of the Company's executive compensation program. The de-emphasized role of base salaries as part of the executive compensation program is demonstrated by the fact that overall base salaries are approximately at the 25th percentile of peer companies for the NEOs.

*Performance-Based Cash Bonus Awards.* The Company's CIP for non-sales executive officers and Commission Plans for sales executives are designed to reward employees for achieving stretch financial and operating goals that are key to the success of our business and are aligned with the short and long-term interests of our stockholders.

The Company believes that CIP cash bonus awards and commission awards are an important component of the executive compensation program, because they reward the NEOs for achieving the annual performance goals established by the Company. However, the CIP cash bonus awards and commission awards represent a small percentage of the executives' total compensation because the Company believes that cash bonus awards are less effective in attracting new executive talent than equity compensation, and they promote retention only in the short-term (the bonus performance period). In addition, the Company prefers to emphasize long-term stockholder value creation over annual operating results. Accordingly, the plan is modestly funded relative to peer companies, as reflected by the following:

The target bonus of 70% of base salary for the CEO and 50% for the other NEOs, except Mr. McNamara, are generally lower than those of peer companies;

The maximum bonus of 87.5% of base salary for the CEO and 62.5% for the other NEOs, except Mr. McNamara, are generally lower than those of peer companies, although the Compensation Committee has the power to approve bonus amounts above the maximum for exceptional performance.

Mr. McNamara participates in our Commission Plans, but not in our CIP. The Compensation Committee has established sales commission plans so that senior sales personnel may earn three to four times their base salary. For 2012, Mr. McNamara's maximum commissions was set at approximately 3 times his base salary. The Company believes that its commission plans are an important part of compensation programs for sales personnel as they incent the achievement of short term sales and represent a retention tool. Most of the companies that the Company competes with for sales talent are much larger than Intuitive Surgical and provide substantial compensation packages to their employees. The Company believes that its commission plans are competitive in the medical device industry.

*CIP Funding.* The first step is comprised of an overall CIP plan funding ( Plan Funding ) goal tied to operating income, excluding stock option expense. Generally, the plan begins funding at the previous year's operating income level, excluding stock option expense, to a maximum funding of 125% of the pool at a predetermined increase in operating income, excluding stock option expense. For 2012, target funding was set at operating income for 2012 of \$985 million, excluding stock option expense. Maximum funding of 125% of the pool was set at \$1,024 million of operating income, excluding stock option expense. The Compensation Committee has approved the Plan Funding for 2013 to begin at the actual operating income achieved in 2012, excluding stock option expense, of \$1,025 million.

*Payout of Funded Amounts.* The amount of our incentive pool that will be paid out as incentive bonuses ( Pay-Out Pool ) for each NEO as well as each eligible employee is determined by an equal weighting of achievement of the operating income goal and Company Performance Goals.

Company Performance Goals are established at the corporate level and are comprised of procedure growth, system sales growth and revenue growth, profitability, marketing objectives, customer training effectiveness, product development, regulatory approvals and compliance, new product introductions, quality of design and manufacture, applied research and protecting intellectual property. Each NEO must contribute as a member of the team to the Company's overall success rather than merely achieve specific objectives within that officer's area of responsibility. The corporate level goals are initially established by the executive team and the CEO and then reviewed and approved by the Compensation Committee annually at the beginning of the year. Since the specific targets of our company performance goals are highly confidential, we do not publicly disclose specific objectives. Revealing specific objectives would provide competitors and other third parties with insights into the Company's confidential planning process and strategies, thereby causing competitive harm.

The nature of the Company's Performance Goals and the weighting assigned to each are subject to change annually. Recurring goals are generally set above prior year results and budgeted levels. The Company's Performance Goals are designed to be aggressive, and there is a risk that payments will not be made at all or will be made at less than 100% of the target amount. The achievement of the goals may be affected by several factors including, but not limited to, the impact of global and regional conditions, credit markets and the related impact on health care spending; timing and success of product development and market acceptance of developed products; and regulatory approvals, clearances and restrictions. Due to these factors which are not entirely controlled by the NEOs and the stretch nature of the goal setting, it is relatively difficult to achieve the company performance goals. The challenge of the goals and the uncertainty in the environment ensures that any payments under the plan are truly performance-based, which is consistent with the plan's objectives.

Our cash incentives for our top sales executives, including one of our NEOs, Mr. McNamara, Executive Vice President, Worldwide Sales and Marketing are tied fully to performance plans which are calculated based on the achievement of predetermined sales metrics, including revenue, surgical procedures completed, contribution margins and fixed costs (the Commission Plans ). Under these Commission Plans, which are approved by the Compensation Committee at the beginning of the year, the sales executives are assigned target

and maximum levels for each metric which are then applied to a scaled bonus rate. The performance pay-out is scaled to the over-achievement of each metric.

Each year, the bonus and commissions structures are reviewed to ensure that the design and payment structure falls in line with our compensation philosophy. At the end of each year, the Compensation Committee determines the amount of the award to be paid to each officer by comparing actual results to the performance goals. The Compensation Committee may, in its discretion, reduce or increase the amount of any individual award based on the officer's overall performance and his contribution to the achievement of the company performance goals. The size of the CIP payout generally does not exceed the size of the Plan Funding.

#### ***Employment Agreements or Other Arrangements***

*Change in Control Plan.* In December 2008, the Board of Directors approved and adopted the Company's Severance Plan (the Change in Control Plan). The Board believes the adoption of the Change in Control Plan is beneficial to our stockholders because it minimizes the uncertainty presented to our valuable workforce in the case of a change in control. Under this plan, all eligible employees of the Company who have been employed at least six months prior to the separation from service date, including executive officers, are entitled to the following severance benefits in the event of a termination of employment without cause or an involuntary separation from service within twelve months after a change in control of the Company:

A lump sum cash payment in the amount equal to the sum of six months of such eligible employee's base compensation (defined in the Change in Control Plan as base salary and target bonus) plus an additional one month of base compensation for every year of such eligible employee's service with the Company, such severance not to exceed 12 months;

Six months of COBRA premiums, provided that such eligible employee elects continued coverage under COBRA; and

100% vesting of all outstanding unvested equity awards that the eligible employee then holds.

See Potential Payments Upon Termination or Change in Control section below for detailed discussions of the Change in Control Plan and estimates of the compensation that would have been payable to the NEOs, had they been triggered at December 31, 2012.

*Other Arrangements.* The NEOs are employed at will. Based on the Company's philosophy, the compensation program for the NEOs does *not* include any of the following pay practices:

Employment agreements;

Severance arrangements, except for the Change in Control Plan described above;

Cash payments made upon a change in control of the Company;

Tax reimbursements; and

Supplemental executive retirement benefits.

In addition, the Company does not provide any perquisites or change in control benefits to the NEOs that are not available to other employees.

#### ***Other Considerations***

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*Tax Deductibility of Compensation Expense.* Section 162(m) of the Internal Revenue Code places a limit of \$1 million on the amount of compensation that the Company can deduct in any one year for compensation paid to the chief executive officer and the three most highly-compensated NEOs employed by the Company at the end of the year (other than the Company's chief financial officer). However, the \$1 million deduction limit does not apply to compensation that is performance-based and provided under a plan that has been approved by the

Company's stockholders. While the Compensation Committee considers the deductibility of awards as one factor in determining executive compensation, the Compensation Committee also looks at other factors in making its decisions as noted above and retains the flexibility to grant awards it determines to be consistent with the Company's goal for its executive compensation program even if the award is not deductible by the Company for tax purposes.

The awards under the CIP and Commission Plans are not designed to qualify as performance-based compensation under Section 162(m) for tax deductibility. Certain awards under the 2010 Incentive Award Plan, including stock options, may qualify as performance-based compensation under Section 162(m) for tax deductibility.

In January 2012, the Compensation Committee approved annual stock grants for certain eligible employees. Given the Company's commitment of a net three-year average burn rate (see below) of 3.0% in the long term, options grants to employees, including NEOs, were reduced relative to prior years.

We believe the Company's executive compensation policy is closely aligned with stockholders interests. While salary and an annual cash incentive bonus represent the achievement of shorter term goals, stock option awards, with a four-year and 3.5-year vesting schedule and ten-year term, represent a longer term compensation structure that promotes retention and continuous commitment to the operating results of the Company. The Company believes that this reflects the value of one's individual contribution to the Company, both present and future. At this phase in the Company's growth cycle, a majority of executive annual compensation is derived from the value of options granted. The following chart displays the historical relationship between our CEO's annual compensation and the change in stockholder value as reflected by the percentage change in value of the Company's common stock price. For comparative purposes, CEO annual compensation consists of salary, accrued bonus, plus the value of equity compensation granted in the following year, as illustrated in the following chart:

\* Assumes that a like number of awards to the February 15<sup>th</sup>, 2013 grants will be granted on August 15<sup>th</sup>, 2013. Refer to the section Long-Term Equity Awards for details.

Although a majority of our executive compensation is derived from stock compensation, NEO grants as a percentage of total grants have shown a continued decrease year over year. This trend reflects management's commitment to support equitable grants across the organization, through lowering their stake and facilitating participation by all employees in the stock compensation program.

*Burn rate.* In administering our equity program, we actively manage our grants in accordance with a target burn rate. We define burn rate as the number of equity awards granted in the year, net of cancellations, divided by the sum of the undiluted weighted average shares of our common stock outstanding during the year plus the number of options that have been issued and are outstanding. The burn rate measures the potential dilutive effect of our annual equity grants. The total number of options granted in 2012 was 1,451,201 and the number of options cancelled was 178,250. As of December 31, 2012 the weighted average number of shares outstanding was 39,845,109 and the total number of granted options outstanding was 4,775,217. For fiscal 2012, our burn rate was 2.85%, and our three-year average burn rate from fiscal 2010 through fiscal 2012 was 2.73%. Similarly, our burn rate as calculated using shareholder advocacy group methodology is below the mean plus one standard deviation of the Company's Global Industry Classification Standard (GICS) group segmented within the Russell 3000 Index. We believe that our burn rate is reasonable in relation to companies in our industry and reflects a judicious use of equity for compensation purposes.

#### ***Base Salary Increases***

Base salaries for executives are reviewed annually in July or more frequently should there be significant changes in responsibilities. In each case, we take into account the results achieved by the executive, his or her future potential, scope of responsibilities and experience, and competitive salary practices.

The Compensation Committee approved base salary increases, reflected in the table below, which take into consideration the Company's team-based approach and the scope of the executive's role and responsibilities relative to other members of the executive team. After giving effect to these increases, the NEOs' total cash compensation opportunities still remain below the median of peer companies due to the Company's philosophy of setting target and maximum bonus opportunities at levels lower than the range commonly provided by peer companies and because there is no long-term cash bonus program at the Company.

Name	August 1, 2012 (\$)	August 1, 2011 (\$)
Gary S. Guthart	560,000	535,000
Jerome J. McNamara	400,000	386,000
Marshall L. Mohr	391,400	380,000
Mark J. Meltzer	372,000	361,200
David J. Rosa	350,000	328,000

#### ***Performance-Based Cash Bonus Awards***

The Company's 2012 performance exceeded the goal for adjusted operating income established by the Compensation Committee for the bonus program. As a result, the incentive pool was funded at 120% of the total targeted cash amount. The amounts earned are a reflection of the Company's achievement against targeted operating income and the annual Company Performance Goals of 97% as well as the NEOs' individual performance. The table below shows each NEO's performance-based cash bonus award for 2012, which was earned in fiscal 2012 and paid in fiscal 2013.

Name	2012 Bonus Award (\$)
Gary S. Guthart	431,200
Jerome J. McNamara (1)	700,839
Marshall L. Mohr	215,000
Mark J. Meltzer	205,000
David J. Rosa	210,000

(1) Mr. McNamara's 2012 amount was awarded under the Commission Plan.

#### **Compensation Risk Considerations**

The Compensation Committee considers, in establishing and reviewing the employee compensation programs, whether the programs encourage unnecessary or excessive risk taking. The Company, after reviewing and discussing the compensation programs with the Compensation and Audit Committees of the Board, believes that the programs are balanced and do not motivate or encourage unnecessary or excessive risk taking because of the following:

Base salaries are fixed in amount and thus do not encourage risk taking.

While the performance-based awards focus on achievement of short-term or annual goals, and short-term goals may encourage the taking of short-term risks at the expense of long-term results, the Company's performance-based award programs represent a small percentage of employees' total compensation opportunities. Performance-based awards are based on various departmental and Company-wide metrics; funding for the awards is capped at the Company level and the distribution of the funds to executive officers is at the discretion of the Compensation Committee.

Long-term equity awards are important to help further align employees' interests with those of the Company's stockholders. The ultimate value of the awards is tied to the Company's stock price and since awards are staggered and subject to long-term vesting schedules, they help ensure that executives have significant value tied to long-term stock price performance. As described above under the section titled "The Role of Long-Term Equity Awards," we have established procedures related to the timing and approval of equity awards.

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Because of the above, the compensation programs appropriately balance risk and the desire to focus employees on specific short-term goals important to the Company's success.



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**COMPENSATION OF NAMED EXECUTIVE OFFICERS**
**2012 SUMMARY COMPENSATION TABLE**

The following Summary Compensation Table sets forth summary information concerning the compensation paid to our NEOs in years ending December 31, 2012, 2011, and 2010 for services to our Company in all capacities.

Name and Principal Position	Year	Salary (\$)	Option Awards (\$) (1)	Non-Equity Incentive Plan Compensation (\$) (2)	Total (\$)
Gary S. Guthart, Ph.D., President and Chief Executive Officer	2012	545,417	4,064,411	431,200	5,041,028
	2011	520,417	3,688,142	340,000	4,548,559
	2010	504,167	4,184,963	361,463	5,050,593
Jerome J. McNamara, Executive Vice President, Worldwide Sales and Marketing	2012	391,834	3,266,664	700,839	3,658,498
	2011	377,833	2,892,660	657,549	3,928,042
	2010	365,000	3,347,970	571,938	4,284,908
Marshall L. Mohr, Senior Vice President and Chief Financial Officer	2012	384,750	2,032,206	215,000	2,416,956
	2011	372,417	1,851,302	190,000	2,413,719
	2010	360,000	2,092,481	175,000	2,627,481
Mark J. Meltzer, Senior Vice President and General Counsel	2012	365,700	2,032,206	205,000	2,397,906
	2011	354,783	1,851,302	200,000	2,406,085
	2010	344,250	1,897,183	170,000	2,411,433
David J. Rosa, Senior Vice President, Emerging Procedures & Technology	2012	337,167	2,032,206	210,000	2,369,373
	2011	316,934	1,851,302	190,000	2,358,236
	2010	286,000	1,952,983	135,000	2,373,983

- (1) The amounts in this column represent the grant date fair values of the option awards granted to the executive in the fiscal year in accordance with stock compensation accounting. See Note 8 of the Notes to the Consolidated Financial Statements contained in our Annual Report on Form 10-K filed on February 4, 2013 for a discussion of all assumptions made by us in determining the valuation of the equity awards.
- (2) Refers to annual bonus earned in the designated fiscal year under the CIP and Commission Plan and paid during February of the next fiscal year. See the Compensation Discussion and Analysis section above for a more detailed discussion.

**GRANTS OF PLAN-BASED AWARDS TABLE**

The following table shows information about the non-equity incentive awards and equity-based awards granted to our NEOs in 2012:

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards (1)			All Other Option Awards: # of Shares Underlying Options (2)	Exercise Price of Options (\$/Sh)	Grant Date Fair Value of Option Awards (3)
		Threshold (\$)	Target (\$)	Maximum (\$)			
Gary S. Guthart	2/15/2012				14,000	505.23	2,000,530
	8/15/2012				14,000	517.31	2,063,881
			381,792	477,240			
Jerome J. McNamara	2/15/2012				11,250	505.23	1,607,569
	8/15/2012				11,250	517.31	1,658,476
			524,000	1,170,000			
Marshall L. Mohr	2/15/2012				7,000	505.23	1,000,265
	8/15/2012				7,000	517.31	1,031,941
			192,375	240,469			
Mark J. Meltzer	2/15/2012				7,000	505.23	1,000,265
	8/15/2012				7,000	517.31	1,031,941
			182,850	228,563			
David J. Rosa	2/15/2012				7,000	505.23	1,000,265
	8/15/2012				7,000	517.31	1,031,941
			168,584	210,729			

- (1) The bonus target for Dr. Guthart was 70% of base salary and 50% of base salary for Mr. Mohr, Mr. Meltzer and Mr. Rosa under the CIP. Mr. McNamara is under the Commission Plan and the target is calculated based on achieving 100% of predetermined sales metrics. At its discretion, the Compensation Committee has the authority to pay any NEO in excess of or below his targeted bonus amount. The goals for 2012 were approved by the Compensation Committee in January 2012. The payout amounts for each NEO were reviewed and approved by the Compensation Committee and the Board of Directors in January 2013 upon completion of the Consolidated Financial Statements for fiscal 2012. The maximum bonus or performance payout is calculated at 125% of the target; however, the Compensation Committee may award higher amounts based on individual performance. Actual amounts awarded under the CIP and the Commission Plan for fiscal year 2012 are reflected in the 2012 Summary Compensation Table in this Proxy Statement. See Compensation Discussion and Analysis section above for detailed discussion of the plans.
- (2) The option awards were issued under our 2010 Incentive Plan. The February 15<sup>th</sup> grants vest 1/8 at the end of six months and 1/48 per month through a four-year period. The August 15<sup>th</sup> grants vest 7/48 at the end of one month and 1/48 per month through a 3.5-year period.
- (3) The amounts shown represent the fair value per share as of the grant date of such award determined pursuant to stock compensation accounting, multiplied by the number of shares. See Note 8 of the Notes to the Consolidated Financial Statements contained in our Annual Report on Form 10-K filed on February 4, 2013 for a discussion of all assumptions made by us in determining the valuation of the equity awards.

## OUTSTANDING EQUITY AWARDS AS OF DECEMBER 31, 2012

The following table summarizes the outstanding stock options that were held by our NEOs as of December 31, 2012:

Name	Grant Date	# of Securities Underlying Unexercised Options (# Exercisable)	# of Securities Underlying Unexercised Options (# Unexercisable) (*)	Option Exercise Price (\$/sh)	Option Expiration Date
Gary S. Guthart	2/13/2004	2,743		18.50	2/13/2014
	2/11/2005	9,500		47.86	2/11/2015
	2/7/2006	50,000		106.69	2/7/2016
	2/15/2007	35,000		112.66	2/15/2017
	2/15/2008	50,000		303.27	2/15/2018
	2/17/2009	57,500	2,500	107.27	2/17/2019
	2/16/2010	26,562	10,938	334.30	2/16/2020
	2/15/2011	14,609	17,266	341.19	2/15/2021
	2/15/2012	2,917	11,083	505.23	2/15/2022
	8/15/2012	2,917	11,083	517.31	8/15/2022
Jerome J. McNamara	2/15/2008	8,464		303.27	2/15/2018
	2/17/2009	2,084	2,083	107.27	2/17/2019
	2/16/2010	21,250	8,750	334.30	2/16/2020
	2/15/2011	11,458	13,542	341.19	2/15/2021
	2/15/2012	2,344	8,906	505.23	2/15/2022
		8/15/2012	2,344	8,906	517.31
Marshall L. Mohr	2/15/2007	1,200		112.66	2/15/2017
	2/15/2008	25,000		303.27	2/15/2018
	2/17/2009	28,750	1,250	107.27	2/17/2019
	2/16/2010	13,281	5,469	334.30	2/16/2020
	2/15/2011	7,333	8,667	341.19	2/15/2021
	2/15/2012	1,458	5,542	505.23	2/15/2022
		8/15/2012	1,458	5,542	517.31
Mark J. Meltzer	11/7/2007	24,625		309.46	11/7/2017
	2/15/2008	25,000		303.27	2/15/2018
	2/17/2009	1,250	1,250	107.27	2/17/2019
	2/16/2010	12,042	4,958	334.30	2/16/2020
	2/15/2011	7,333	8,667	341.19	2/15/2021
	2/15/2012	1,458	5,542	505.23	2/15/2022
		8/15/2012	1,458	5,542	517.31
David J. Rosa	2/15/2008	20,000		303.27	2/15/2018
	2/17/2009	28,750	1,250	107.27	2/17/2019
	2/16/2010	12,396	5,104	334.30	2/16/2020
	2/15/2011	7,333	8,667	341.19	2/15/2021
	2/15/2012	1,458	5,542	505.23	2/15/2022
		8/15/2012	1,458	5,542	517.31

(\*) All of the listed options, except the August 15, 2012 options, vest 1/8 upon completion of 6 months of service following the date of grant and 1/48 per month thereafter, contingent upon continued employment. The August 15, 2012 options vest 7/48 upon completion of one month of service following the date of the grant and 1/48 per month thereafter, contingent upon continued employment. All of these options have a ten-year term.

**OPTION EXERCISES DURING FISCAL 2012**

The following table summarizes the options exercised during the year ended December 31, 2012 and the value realized upon exercise for our NEOs:

Name	Number of Shares Acquired on Exercise (#)	Value Realized Upon Exercise (\$) (1)
Gary S. Guthart	11,500	5,773,963
Jerome J. McNamara	45,394	15,158,342
Marshall L. Mohr	18,800	8,207,484
Mark J. Meltzer	17,500	6,486,334
David J. Rosa	11,000	4,460,882

- (1) The value realized equals the excess of the fair market value of our common stock at exercise over the option exercise price, multiplied by the number of shares for which the option was exercised.

**Potential Payments Upon Termination or Change in Control**

The table below shows potential payments to the NEOs upon a change in control of the Company and subsequent involuntary separation from service within twelve months after the change in control, in accordance with the Change in Control Plan. The amounts shown assume that termination was effective December 31, 2012, the last business day of the year, under the Change in Control Plan are estimates of the amounts that would be paid to the executives upon termination in addition to the base salary and bonus earned during 2012. The actual amounts can be determined only at the actual time of an executive's termination. See the Employment Agreements or Other Arrangements section of the Compensation Discussion and Analysis in this Proxy Statement for a discussion of the terms of the Change in Control Plan.

Name	Base Compensation and Target Bonus (\$) (1)	COBRA Premiums (\$)	Total Spread Value Acceleration (\$) (2)	Total Potential Payment (\$) (3)
Gary S. Guthart, Ph.D.	941,792	9,929	5,240,586	6,192,306
Jerome J. McNamara (3)	924,000	9,123	4,183,805	5,116,928
Marshall L. Mohr	583,775	9,929	2,625,365	3,219,068
Mark J. Meltzer	523,850	9,929	2,545,613	3,079,393
David J. Rosa	518,584	9,929	2,568,399	3,096,913

- (1) Amounts shown are the maximum potential payment the executive would have received as of December 31, 2012. Amounts of parachute payment cut-back as described below, if any, would be calculated at actual termination.
- (2) Amounts shown assume that all stock options would be exercised immediately upon termination of employment. Stock option values represent the excess of value of the option shares for which vesting is accelerated over the exercise price for those option shares, using \$490.37 per share, which is the closing market price of a share of our common stock on December 31, 2012, the last trading day of our 2012 fiscal year.
- (3) Mr. McNamara's amount will be awarded under the Commission Plan.

For purposes of the Change in Control Plan, an involuntary separation from service for the NEOs generally means, (i) without the executive's express written consent, the assignment to the executive of any duties or the significant reduction of the executive's duties, authority or responsibilities, which is inconsistent with the executive's duties, authority or responsibilities in effect immediately prior to such assignment, or the removal of the executive from such duties, authority or responsibilities; (ii) a reduction by the Company in the base compensation of the executive as in effect immediately prior to such reduction; (iii) a material reduction by the Company in the kind or level of employee benefits to which the executive is entitled immediately prior to such reduction with the result that the executive's overall benefits package is significantly reduced; (iv) the relocation of the executive to a facility or a location more than 25 miles from the executive's then present location, without

the executive's express written consent; (v) any purported termination of the executive by the Company which is not effected for disability or for cause, or any purported termination for which the grounds relied upon are not valid; (vi) the failure of the Company to obtain the assumption of the agreement by any successors contemplated in the Change in Control Plan; or (vii) any act or set of facts or circumstances which would, under California case law or statute constitute a constructive termination of the executive. In order for an executive to terminate employment in an involuntary separation from service, he or she must provide notice to the Company of the existence of a condition listed above, within 30 days of the initial existence of the condition, and the Company shall have 30 days following receipt of such notice to remedy such condition and not make any payments hereunder in connection with such termination of employment.

The payments and benefits pursuant to the Change in Control Plan are subject to the executive's execution and non-revocation of a release of claims. Further, the Change in Control Plan specifically provides for a parachute payment cut-back, where payments and benefits shall be made to the executive in full or as to such lesser amount as which would result in no portion of the payments being subject to an excise tax under Section 280G of the Internal Revenue Code, whichever of the foregoing amounts is greater on an after-tax basis.

**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The Board has determined that the following directors are independent under current NASDAQ rules: Craig H. Barratt, Eric H. Halvorson, Amal M. Johnson, Alan J. Levy, Floyd D. Loop, Mark J. Rubash and George Stalk, Jr.

The Company has adopted a written policy for approval of transactions between the Company and its related parties, such as directors, director nominees, executive officers, greater than five percent beneficial owners and their respective immediate family members, where the amount involved in the transaction exceeds or is expected to exceed \$120,000 in a single calendar year. The policy provides that the Chief Financial Officer and the General Counsel review transactions subject to the policy and determine whether or not to approve or ratify those transactions. In doing so, they take into account:

whether the terms of the transaction are fair to the Company and on the same basis as would apply if the transaction did not involve a related party;

whether there are business reasons for the Company to enter into the related party transaction;

whether the transaction would impair the independence of an outside director;

whether the transaction would present an improper conflict of interest for any director or executive officer of the Company; and

any other factors deemed appropriate.

The Chief Financial Officer and the General Counsel may not participate in the approval of a related party transaction for which he or she is a related party, in which case the Chief Executive Officer would review the transaction using the factors described above.

In addition, the Chief Financial Officer and General Counsel have reviewed and pre-approved each of the following types of related party transactions, which shall be deemed to be approved, as applicable, under the policy:

Compensation to an executive officer of the Company, if such compensation has been approved, or recommended to the Company's Board of Directors for approval, by the Compensation Committee of the Board of Directors of the Company.

The following transactions under \$120,000 that are in the Company's ordinary course of business and where the financial interest of the related party arises only in the following indirect manners:

- a) from the related party's position as a director of another corporation or organization that is a party to the transaction; or
- b) from the direct or indirect ownership by the related party (or parties) of less than a 5% equity interest in another person (other than a partnership) which is a party to the transaction; or
- c) from the related party's position as a limited partner in a partnership in which the related party (or parties) have an interest of less than 10%, and the related party is not a general partner of and does not have another position in the partnership.

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Transactions that are in the Company's ordinary course of business and where the interest of the related party arises solely from the ownership of a class of equity securities in the Company and all holders of such class of equity securities of the Company will receive the same benefit on a pro rata basis.

A summary of all material related party transactions, if any, is provided to the Audit Committee for its review at each regularly scheduled Audit Committee meeting.

Since January 1, 2012, we have not been a party to, and we have no plans to be a party to, any transaction or series of similar transactions in which the amount involved exceeded or will exceed \$120,000 and in which any current director, executive officer, director nominee, holder of more than five percent of our capital stock, or any member of the immediate family of any of the foregoing, had or will have a direct or indirect material interest.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND  
MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information in the following table sets forth the ownership of our common stock, as of December 31, 2012, by: (i) any person who is known by us to be the beneficial owner of more than five percent of our common stock; (ii) each of the executive officers named in our Executive Officers of the Company section; (iii) each of our directors; and (iv) all such executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. For the purposes of calculating the percent ownership, as of December 31, 2012, approximately 40.1 million shares were issued and outstanding, and, for any individual who beneficially owns shares represented by options exercisable within 60 days of December 31, 2012, these shares are treated as if outstanding for that person, but not for any other person.

The following table indicates those owners and their total number of beneficially owned shares, including shares subject to options exercisable within 60 days of December 31, 2012; however, unless otherwise indicated, these shares do not include any options awarded after December 31, 2012:

Beneficial Owner	Beneficial Ownership	
	Number of shares	Percent of Total
Capital World Investors	3,064,600(1)	7.6%
Baillie Gifford & Co.	2,452,103(2)	6.1%
BlackRock, Inc.	2,206,186(3)	5.5%
Lonnie M. Smith	452,728(4)	1.1%
Gary S. Guthart, Ph.D.	295,958(5)	0.7%
Marshall L. Mohr	83,004(6)	0.2%
Mark J. Meltzer	76,942(7)	0.2%
David J. Rosa	75,247(8)	0.2%
Jerome J. McNamara	56,036(9)	0.1%
Colin Morales	44,512(10)	0.1%
Augusto V. Castello	30,000(11)	0.1%
Mark J. Rubash	20,948(12)	0.1%
Floyd D. Loop, M.D.	20,188(13)	0.1%
Alan J. Levy, Ph.D.	13,151(14)	*
Amal M. Johnson	11,833(15)	*
Salvatore J. Brogna	7,881(16)	*
Eric H. Halvorson	7,809(17)	*
George Stalk, Jr.	5,938(18)	*
Craig H. Barratt, Ph.D.	5,583(19)	*
All executive officers and directors as a group (16 persons)	1,207,758(20)	3.0%

\* Represents less than 0.1% of the issued and outstanding shares.

- (1) Based on information provided by Capital World Investors, 333 South Hope Street, 55th Floor, Los Angeles, CA 90071, in a schedule 13G/A filed with the SEC on February 10, 2012 reporting beneficial ownership of Intuitive Surgical's stock as of December 30, 2011. According to such schedule 13G/A, Capital World Investors is an investment advisor and has sole power to dispose or direct the disposition with respect to 3,064,600 shares.
- (2) Based on information provided by Baillie Gifford & Co., Calton Square, 1 Greenside Row, Edinburg EH1 3AN, Scotland, UK, in a Schedule 13G/A filed with the SEC on January 17, 2012 reporting beneficial ownership of Intuitive Surgical's stock as of December 31, 2011. According to such schedule 13G/A, Baillie Gifford & Co. is an investment advisor and has sole power to vote or direct the vote with respect to 1,772,583 shares and sole power to dispose or direct the disposition with respect to 2,452,103 shares.



- (3) Based on information provided by BlackRock, Inc., ( BlackRock ) 40 East 52nd Street, New York, NY 10022, in a Schedule 13G filed with the SEC on January 20, 2012 reporting beneficial ownership of Intuitive Surgical s stock as of December 30, 2011. According to such schedule 13G, BlackRock has the sole power to dispose or direct the disposition with respect to 2,206,186 shares.
- (4) Includes 13,000 shares held by the Smith Family Foundation, 204,497 shares held by Lonnie & Cheryl Smith Community Property, 16,317 shares in GRAT 6, 23,130 shares in GRAT 7, 30,000 shares in GRAT 8, 4,000 shares in GRAT Paylink, 30,000 shares held by McKram Investors on behalf of Lonnie & Cheryl Smith, 15,000 shares held by McKram Investors II on behalf of Lonnie & Cheryl Smith, 27,206 shares held directly by Lonnie Smith, as well as 89,578 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (5) Includes 37,653 shares directly owned and 258,305 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (6) Includes 1,242 shares directly owned and 81,762 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (7) Includes 567 shares directly owned and 76,375 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (8) Includes 622 shares directly owned and 74,625 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (9) Includes 2,780 shares directly owned and 53,256 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (10) Includes 260 shares directly owned and 36,750 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (11) Includes 30,000 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (12) Includes 10 shares directly owned and 20,938 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (13) Includes 20,188 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (14) Includes 2,213 shares directly owned and 10,938 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (15) Includes 2,000 shares directly owned and 9,833 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (16) Includes 600 shares directly owned and 6,844 shares issuable pursuant to options exercisable within 60 days of December 31, 2012. Also includes 437 shares held by the JARLSB Living Trust, of which Mr. Brogna is a trustee and has voting and investment authority over the shares held by the trust.
- (17) Includes 1,871 shares directly owned and 5,938 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (18) Includes 5,938 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.
- (19) Includes 1,000 shares held by the Barratt-Oakley Trust dated November 29th 2004, of which 35 Mr. Barratt is a trustee and has voting and investment authority over the shares held by the trust, as well as 4,583 shares issuable pursuant to options exercisable within 60 days of 12/31/2012.
- (20) Includes 793,601 shares issuable pursuant to options exercisable within 60 days of December 31, 2012.

**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires that our executive officers and directors, and persons who own more than 10% of a registered class of our equity securities, file reports of ownership and changes in ownership (Forms 3, 4 and 5) with the SEC. Executive officers, directors and greater-than-10% beneficial owners are required to furnish us with copies of all of these forms which they file.

Based solely on our review of these reports or written representations from certain reporting persons, we believe that during 2012, all filing requirements applicable to our officers, directors, greater-than-10% beneficial owners and other persons subject to Section 16(a) of the Exchange Act were met.

**Code of Business Conduct & Ethics**

We have adopted a code of ethics that applies to all employees, including our principal executive officer and principal financial officer. The full text of our code of ethics is posted on our website at <http://www.intuitivesurgical.com>. We intend to disclose future amendments to our code of business conduct and ethics, or certain waivers of such provisions, at the same location on our website identified above. The inclusion of our website address in this Proxy Statement does not include or incorporate by reference the information on our website into this Proxy Statement.

**Equity Compensation Plan Information**

The following table contains information as of December 31, 2012 for two categories of equity compensation plans:

<b>Plan Category</b>	<b>Number of securities to be issued upon exercise of outstanding options, and rights (a)</b>	<b>Weighted-average exercise price of outstanding options</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</b>
Equity compensation plans approved by security holders	4,155,073(1)	\$ 329.65	2,090,322(2)
Equity compensation plans not approved by security holders (3)	620,144	\$ 415.77	20,392
<b>Total</b>	<b>4,775,217</b>	<b>\$ 340.83</b>	<b>2,110,714</b>

- (1) Represents 2,113,758 options under the 2000 Equity Incentive Plan, 99,190 options under the 2000 Directors Plan, 1,939,147 options under the 2010 Plan and 2,978 under plans assumed from acquisition of Computer Motion, Inc.
- (2) Represents 1,537,248 shares available for future issuance under the 2010 Plan, 81,872 shares available for future issuance under the 2000 Directors Plan and 471,202 shares available for future issuance under the Employee Stock Purchase Plan. All options authorized and remaining available for issuance at the expiration date will be terminated. Options issued and outstanding at that date will remain outstanding until exercised, forfeited or when they lapse.
- (3) Represents options under the 2009 Employment Commencement Incentive Plan, adopted by the Board of Directors in October 2009 and first used in fiscal 2010. Options are granted at an exercise price not less than the fair market value of the stock on the date of grant and have a term not to exceed ten years.

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**PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The Company's independent registered public accounting firm and its auditors for the years ended December 31, 2012 and 2011 were Ernst & Young LLP. We expect that Ernst & Young LLP will serve as our independent registered public accounting firm and auditors for fiscal year 2013. Representatives of Ernst & Young LLP are expected to be present at the Annual Meeting, and they will have an opportunity to make a statement if they desire to do so and are expected to be available to respond to appropriate questions. All of the services described in the following fee table were approved by the Audit Committee.

	<b>Years Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Audit Fees	\$ 1,775,000	\$ 1,586,000
Tax Fees	63,000	69,000
All Other Fees	2,000	2,000
 Total	 \$ 1,840,000	 \$ 1,657,000

*Audit Fees.* This category includes the audit of our annual financial statements, the audit of our internal control over financial reporting, review of financial statements included in our Form 10-Q quarterly reports, and services that are normally provided by the independent registered public accounting firm in connection with statutory audit and regulatory filings, for those fiscal years. This category also includes advice on accounting matters that arose during, or as a result of, the audit or the review of interim financial statements.

*Tax Fees.* This category consists of services provided by Ernst & Young LLP for tax compliance, tax advice, and tax planning.

*All Other Fees.* This category consists of all other services provided by Ernst & Young LLP that are not reported above. The services for the disclosed under this category include accounting consultation fees and an annual subscription fee to Ernst & Young LLP for accounting literature.

**Pre-Approval Policies and Procedures**

All audit services, audit-related services, tax services and other services were pre-approved by our Audit Committee, which concluded that the provision of such services by Ernst & Young LLP was compatible with the maintenance of that firm's independence in the conduct of its auditing functions. The Audit Committee's pre-approval policy provides for the pre-approval of audit, audit-related, tax, and other services specifically described by the committee on an annual basis, and unless a type of service is pre-approved under the policy, it will require separate pre-approval by the committee if it is to be provided by the independent registered public accounting firm. The policy authorizes the committee to delegate to one or more of its members pre-approval authority with respect to permitted services.

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**AUDIT COMMITTEE REPORT**

*The following audit committee report shall not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, and shall not otherwise be deemed filed under these acts, except to the extent we specifically incorporate by reference into such filings.*

Our Audit Committee is composed of independent directors, as determined in accordance with NASDAQ Stock Market's Rules and Rule 10A-3 of the Exchange Act. The Audit Committee has certain duties and powers as described in its written charter adopted by the Board. A copy of the charter can be found on the Company's website at [www.intuitivesurgical.com](http://www.intuitivesurgical.com).

As described more fully in its charter, the purpose of the Audit Committee is to assist the Board of Directors with its oversight responsibilities regarding the integrity of our Company's financial statements, our compliance with legal and regulatory requirements, assessing the independent registered public accounting firm's qualifications and independence and the performance of the persons performing internal audit duties for our Company and the independent registered public accounting firm. Management is responsible for preparation, presentation and integrity of our financial statements as well as our financial reporting process, accounting policies, internal audit function, internal accounting controls and disclosure controls and procedures. The independent registered public accounting firm is responsible for performing an independent audit of our consolidated financial statements in accordance with generally accepted auditing standards and to issue a report thereon. The Audit Committee's responsibility is to monitor and oversee these processes. The following is the Audit Committee's report submitted to the Board of Directors for 2012.

The Audit Committee has:

reviewed and discussed our audited financial statements with management and Ernst & Young LLP, the independent auditors;

discussed with Ernst & Young LLP the matters required to be discussed by the Statement on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1, AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T; and

received from Ernst & Young LLP the written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent auditors' communications with the Audit Committee concerning independence, and discussed with the auditors their independence.

In addition, the Audit Committee has met separately with management and with Ernst & Young LLP.

Based on the review and discussions referred to above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in our Annual Report on Form 10-K for the year ended December 31, 2012 for filing with the Securities and Exchange Commission.

Members of the Audit Committee

Mark J. Rubash (Chairman)

Eric H. Halvorson

George Stalk, Jr.

## OVERVIEW OF PROPOSALS

This Proxy Statement contains FOUR proposals requiring stockholder action. Proposal No. 1 requests the election of THREE directors to the Board. Proposal No. 2 requests the approval of an amendment and restatement of the Company's 2010 Incentive Award Plan. Proposal No. 3 requests an advisory approval of the compensation of our NEOs. Proposal No. 4 requests the ratification of the appointment of the independent registered public accounting firm. Each of the proposals is discussed in more detail in the pages that follow.

### PROPOSAL NO. 1

#### ELECTION OF DIRECTORS

The Board of Directors has nine authorized seats. Three directors are to be elected at the Annual Meeting to serve a one-year term expiring at the 2014 Annual Meeting of Stockholders or until a successor has been elected and qualified. The remaining six directors will continue to serve their respective terms.

Amal M. Johnson, Eric H. Halvorson and Alan J. Levy, Ph.D. have been nominated by the Board of Directors to serve as directors. Please refer to Directors and Corporate Governance section above for the nominees' biographies.

At the 2012 Annual Meeting of Stockholders, the Company's stockholders approved to eliminate the classified structure of the Board and provide for the annual election of directors beginning with the Annual Meeting. The elimination of the classified structure will be phased in over a three-year period beginning with the Annual Meeting. The directors elected at the 2012 Annual Meeting will serve the remainder of their three-year terms expiring at the 2015 Annual Meeting of Stockholders, the directors elected at the 2011 Annual Meeting of Stockholders will serve the remainder of their three-year terms expiring at the 2014 Annual Meeting of Stockholders and the directors elected at the 2010 Annual Meeting of Stockholders will serve the remainder of their three-year terms expiring at the Annual Meeting.

The Company's Bylaws provide for a majority voting standard in uncontested elections of directors. As such, in an election where the number of nominees for director does not exceed the number of directors to be elected, a nominee for director will be elected to the Board of Directors if the number of shares voted for the nominee exceeds the number of shares voted against the nominee. The required quorum for a meeting of the Company's stockholders is a majority of the outstanding shares of common stock entitled to vote at the meeting. The majority voting standard would not apply, however, if the number of nominees for director exceeds the number of directors to be elected. In that case, the nominees receiving the highest number of affirmative votes of the shares entitled to vote at the meeting would be elected.

The majority voting standard will apply to the election taking place at the meeting. Consequently, in order to be elected, a nominee must receive more for votes than against votes. Proxies may not be voted for more than the three nominees, and stockholders may not cumulate votes in the election of directors. In the event any nominee is unable or declines to serve as a director at the time of the meeting, the proxies will be voted for the nominee, if any, who may be designated by the Board of Directors to fill the vacancy.

Shares represented by the accompanying proxy will be voted for the election of the nominees recommended by the Board of Directors unless the proxy is marked in such a manner so as to withhold authority to vote. In the event that any nominee should be unavailable for election as a result of an unexpected occurrence, such shares will be voted for the election of such substitute nominee as management may propose. Each person nominated for election has agreed to serve if elected, and the Board of Directors has no reason to believe that any nominee will be unable to serve.

#### Vote Required

A majority of the votes cast is required to elect each of the director nominees. This means that to be elected a nominee must receive more for votes than against votes.

#### Recommendation of the Board

**The Board recommends that stockholders vote FOR the election of Amal M. Johnson, Eric H. Halvorson, and Alan J. Levy, Ph.D.**

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**PROPOSAL NO. 2**

**APPROVAL OF AMENDMENT AND RESTATEMENT OF THE INTUITIVE SURGICAL, INC. 2010 INCENTIVE AWARD PLAN**

**General**

We are asking you to approve the amendment and restatement to Intuitive Surgical, Inc. 2010 Incentive Award Plan, (the Amended 2010 Plan ), which makes the changes to the Intuitive Surgical, Inc. 2010 Incentive Award Plan, as previously amended (the 2010 Plan ), summarized in the next paragraph and described in detail below. Our Board of Directors has unanimously adopted, subject to stockholder approval, the Amended 2010 Plan for employees and other service providers of the Company and its subsidiaries. Per the requirements set forth in the 2010 Plan, the Amended 2010 Plan will become effective if approved by the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal.

The Amended 2010 Plan:

Increases the number of shares of common stock reserved for issuance under said plan by 1,200,000 from 3,650,000, thereby increasing the total number of shares reserved for issuance to 4,850,000;

Provides for the grant of restricted stock awards, restricted stock units, performance share awards, dividend equivalents, performance bonus awards and other performance-based awards to eligible individuals, in addition to the incentive stock options, nonqualified stock options, and stock appreciation rights ( SARs ) provided for under the 2010 Plan;

Provides that each share of common stock that is subject to awards other than a stock option or a SAR that is settled in shares of common stock (such award, a Full Value Award ) will be counted against the number of shares reserved for issuance under the plan as 2.3 shares;

Is designed to permit us to make cash-based awards and equity-based awards intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended ( Section 162(m) );

Prohibits the payment of dividend equivalents on unvested performance awards, but provides that payment will be made only to the extent that the performance-based vesting conditions are subsequently satisfied and the award vests; and

Prohibits the payment of dividend equivalents on stock options or SARs.

In addition to the above, we are asking stockholders to approve the Amended 2010 Plan to satisfy the stockholder approval requirements of Section 162(m).

In general, Section 162(m) places a limit on the deductibility for federal income tax purposes of the compensation paid to our Chief Executive Officer or any of our three other most highly compensated executive officers (other than our Chief Financial Officer). Under Section 162(m), compensation paid to such persons in excess of \$1 million in a taxable year generally is not deductible. However, compensation that qualifies as performance-based under Section 162(m) does not count against the \$1 million deduction limitation. One of the requirements of performance-based compensation for purposes of Section 162(m) is that the material terms of the plan under which compensation may be paid be disclosed to and approved by our public stockholders. For purposes of Section 162(m), the material terms include (a) the employees eligible to receive compensation, (b) a description of the business criteria on which the performance goals may be based and (c) the maximum amount of compensation that can be paid to an employee under the performance goals. Each of these aspects of the 2010 Plan, as proposed to be amended and restated, is discussed below, and stockholder approval of this Proposal No. 2 will be deemed to constitute approval of the material terms of the Amended 2010 Plan for purposes of the stockholder approval requirements of Section 162(m).



Stockholder approval of the Amended 2010 Plan is only one of several requirements under Section 162(m) that must be satisfied for amounts realized under the Amended 2010 Plan to qualify for the performance-based compensation exemption under Section 162(m), and submission of the material terms of the Amended 2010 Plan's performance goals for stockholder approval should not be viewed as a guarantee that we will be able to deduct all compensation under the Amended 2010 Plan. Nothing in this proposal precludes us or the Compensation Committee from making any payment or granting awards that do not qualify for tax deductibility under Section 162(m).

If stockholders do not approve this Proposal No. 2, the 2010 Plan will continue in full force and effect, but we will not make grants of Full Value Awards or cash-based awards under the 2010 Plan.

## Introduction

We designed the 2010 Plan with the intent to conform to best practices in equity compensation plans. The 2010 Plan was initially approved by shareholders on April 21, 2010 and reserved a total of 1,250,000 shares thereunder, and replaced our previously expiring 2000 Equity Incentive Plan. The 2010 Plan adopted many features designed to address stockholders concerns related to equity incentive plans such as prohibiting repricing, eliminating evergreen share replenishment features, granting only non-discounted options, and disallowing transfer of options to third parties.

To continue to align the long-term interests of our employees with those of our stockholders, and attract and retain the highest quality of talent in a highly competitive labor market, we have determined to amend and restate the 2010 Plan to increase the number of shares of common stock reserved for issuance by 1,200,000 shares. Our request is approximately 3.0% of the total shares of common stock outstanding as of the record date. Equity-based compensation continues to serve as a key component of our Company's success. The Compensation Committee and the Board of Directors have approved and are asking you to approve the amendment and restatement to the 2010 Plan. Non-approval of the Amended 2010 Plan may compel the Company to increase the cash component of employee compensation because the Company would need to replace components of compensation previously delivered in equity awards.

The Company believes that long-term equity awards are an extremely important way to attract and retain a talented executive team and align the executives' interests with the Company's stockholders. Over the past five years, the Company's investment in the expansion of robotic surgery, including development of *da Vinci* Surgical Systems, development of surgical instruments and accessories, regulatory approval and compliance, expanding surgical applications, training surgeons and surgical teams and otherwise expanding the market for our products; has resulted in exceptional growth in the Company's revenue and earnings. Over the seven-year period from 2006 through 2012, the Company's annual revenue grew from \$373 million to \$2.2 billion; net income grew from \$72 million to \$657 million, while the Company's cash and investments grew from \$203 million at December 31, 2005 to \$2.9 billion at December 31, 2012. From March 2009 through December 31, 2012, the Company has also repurchased 3.6 million shares of its outstanding common stock. The Company's success has also resulted in a significant increase in stockholder value as the Company's market capitalization grew from \$4.2 billion at December 31, 2005 to \$19.7 billion at December 31, 2012, an increase of approximately 469%.

The Board believes the Company's success is due to its highly talented employee base and that future success depends on the ability to attract and retain high-caliber employees. The Company's engineering operations are primarily located in Silicon Valley, where it must compete with many technology companies, including high profile start-ups, for a limited pool of talented people. We also compete with other large medical device companies for a limited pool of exceptional sales and service personnel globally. The ability to grant equity awards is a necessary and powerful recruiting and retention tool for the Company to obtain the high-quality employees it needs.

The 2009 Employment Commencement Incentive Plan and the 2010 Plan are the only active employee equity plans (other than our Employee Stock Purchase Plan). As of January 31, 2013, the Compensation



Committee anticipates that the 1,200,000 shares requested under the Amended 2010 Plan, plus 1,537,133 shares currently available for issuance under the 2010 Plan prior to the amendment and restatement, and the remaining 83,687 shares authorized under the 2009 Employment Commencement Incentive Plan (together the Equity Plans ) will enable the Company to fund its equity compensation program through the date of our 2014 Annual Meeting, accommodating anticipated grants relating to the hiring, retention and promotion of employees.

The Compensation Committee (which administers our equity plans) recognizes its responsibility to strike a balance between stockholder concerns regarding the potential dilutive effect of equity awards and the ability to attract, retain and reward employees whose contributions are critical to the long-term success of the Company. Key considerations in requesting stockholder approval for the Amended 2010 Plan are:

The Company stresses a team approach and environment, believes that all employees should be driving a common set of goals and believes that our employees' interests should be aligned with the interests of our stockholders. Accordingly, all U.S. employees and nearly all non-U.S. employees are granted long-term equity awards.

The Compensation Committee intends to limit the average number of equity awards granted under the Equity Plans plus the Directors Option Plan to a burn rate of no more than 3% (see below).

#### **Burn Rate and Overhang**

In administering our equity program, we consider both our burn rate and our overhang. We define burn rate as the number of equity awards granted in the year, net of cancellations, divided by the sum of the undiluted weighted average shares of our common stock outstanding during the year plus the number of options that have been issued and are outstanding. The burn rate measures the potential dilutive effect of our annual equity grants. The total number of options granted in 2012 was 1,451,201 and the number of options cancelled was 178,250. As of December 31, 2012 the weighted average number of shares outstanding was 39,845,109, and the total number of granted options outstanding was 4,775,217. For fiscal 2012, our burn rate was 2.85% compared to 2.68% for fiscal 2011. Our three-year average burn rate from fiscal 2010 through fiscal 2012 was 2.73%.

We define overhang as the equity awards outstanding but not exercised, plus equity awards available to be granted (the available equity award shares), divided by the total shares of common stock outstanding plus the available equity award shares. The overhang measures the potential dilutive effect of outstanding equity awards and future awards available for grant.

The following table shows the details of equity awards available for grant as of January 31, 2013 and as of December 31, 2012 and assumes stockholders amend and restate the 2010 Plan:

	January 31, 2013	December 31, 2012
2010 Incentive Award Plan	1,543,386	1,537,248
Proposed shares under 2010 Incentive Award Plan amendment	1,200,000	
2009 Employment Commencement Incentive Plan	109,687	20,392
2000 Non-employee Directors' Stock Option Plan	81,872	81,872
<b>Total estimated shares available to grant</b>	<b>2,934,945</b>	<b>1,639,512</b>
Options outstanding	4,650,409	4,775,217
<b>Total overhang</b>	<b>7,585,354</b>	<b>6,414,729</b>
Weighted average shares outstanding	40,156,459	40,126,618
<b>Total overhang percentage</b>	<b>15.89%</b>	<b>13.78%</b>

We believe that our burn rate and equity overhang are reasonable in relation to companies in our industry and reflect a judicious use of equity for compensation purposes. We also encourage our employees to hold their options for an extended period of time and view performance for the long-term.

Range of Exercise Prices		Number of Shares	Options Outstanding			Number of Shares	Options Exercisable		
			Weighted Average Remaining Contractual Life	Weighted Average Exercise Price Per Share	Aggregate Intrinsic Value (in millions) (1)		Weighted Average Remaining Contractual Life	Weighted Average Exercise Price Per Share	Aggregate Intrinsic Value (in millions) (1)
\$0.00	264.75	936,113	5.1	\$ 120.56	879,391		\$ 116.47		
\$267.40	\$334.30	1,265,206	6.4	327.79	928,148		316.28		
\$341.19	\$365.98	949,283	8.0	343.50	396,654		344.68		
\$368.70	\$517.31	1,344,211	9.3	501.36	266,126		499.68		
\$518.29	\$579.24	155,606	9.4	545.92	11,657		551.62		
Total		4,650,419	7.4	\$ 344.30	\$ 1,070.03	2,481,976	6.3	\$ 270.79	\$ 753.50

(1) The aggregate intrinsic value represents the total pre-tax intrinsic value, based on the Company's closing stock price of \$571.38 as of January 31, 2013, which would have been received by the option holders had all option holders exercised their options as of that date. As of January 31, 2013, there were approximately 4,650,419 stock option awards that remained outstanding and unexercised. The outstanding stock options had a weighted average exercise price of \$340.30 and a weighted average remaining life of 7.4 years. The options generally vest over four years. As illustrated in the table below, as of January 31, 2013 of the 4,650,419 outstanding stock options, 198,519 had been outstanding for more than six years, and all of these have been continuously in the money, with a weighted average exercise price of \$80.41 and a weighted average remaining term of 2.6 years. Stock options outstanding for less than six years totaled 4,451,890, with a weighted average exercise price of \$356.07 and a weighted average remaining term of 7.6 years.

	Options Outstanding As of January 31, 2013		
	Options	Weighted Average Exercise Price	Average Remaining Term
Vested options in the money and outstanding in excess of six years	198,519	\$ 80.40	2.6
Options outstanding six years or less	4,451,890	\$ 356.07	7.6

A summary of the principal provisions of the Amended 2010 Plan is set forth below. The summary is qualified by reference to the full text of the Amended 2010 Plan, which is included as Exhibit A to this proxy statement.

## General

The Amended 2010 Plan has a ten-year term.

The Amended 2010 Plan provides for the grant of stock options, both incentive stock options and nonqualified stock options, SARs, restricted stock awards, restricted stock units, performance share awards, dividend equivalents, performance bonus awards and other performance-based awards to eligible individuals.

3,650,000 shares of common stock were previously authorized for issuance pursuant to awards under the 2010 Plan and we are proposing to increase the number of shares under the Amended 2010 Plan by 1,200,000.

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Assuming that Proposal No. 2 is approved, the number of shares of common stock requested as an amendment and restatement to our 2010 Plan represent approximately 7.7% of the total outstanding shares of common stock as of December 31, 2012.

As of February 25, 2013, the closing price of our common stock on the NASDAQ Global Select Market was \$566.34 per share.

#### **Administration**

The Amended 2010 Plan is administered by the Compensation Committee of our Board of Directors. The Compensation Committee may delegate to a committee of one or more members of our Board of Directors or one or more of our officers the authority to grant or amend awards to participants other than our senior executives who are subject to Section 16 of the Exchange Act or employees who are covered employees within the meaning of Section 162(m) of the Internal Revenue Code. Unless otherwise determined by the Board of Directors, the Compensation Committee will consist solely of two or more members of the Board of Directors, each of whom is an outside director within the meaning of Section 162(m) of the Internal Revenue Code, a non-employee director as defined by Rule 16b-3 of the Exchange Act, and an independent director under the rules of the NASDAQ Stock Market (or other principal securities market on which shares of our common stock are traded).

The Compensation Committee will have the exclusive authority to administer the Amended 2010 Plan, including the power to determine eligibility, the types and sizes of awards, the price and timing of awards and the acceleration or waiver of any vesting restriction, as well as the authority to delegate such administrative responsibilities. However, the full Board of Directors will conduct the general administration of the Amended 2010 Plan with respect to any awards to non-employee members of the Board of Directors.

#### **Eligibility**

Persons eligible to participate in the Amended 2010 Plan include our seven non-employee members of the Board of Directors, approximately 2,330 employees of the Company and its subsidiaries and affiliates (including our executive officers), and consultants to the Company and its subsidiaries, as determined by the Compensation Committee.

#### **Limitation on Awards and Shares Available**

The aggregate number of shares of common stock which may be issued or transferred pursuant to the 2010 Plan is 3,650,000 shares of common stock. If the Amended 2010 Plan is approved by the stockholders, such aggregate number of shares will be 4,850,000. Any shares that are subject to awards of options or stock appreciation rights shall be counted against this limit as one (1) share for every one (1) share granted. Any shares that are subject to Full Value Awards shall be counted against this limit as 2.3 shares for every one (1) share granted. The shares of common stock covered by the Amended 2010 Plan may be treasury shares, authorized but unissued shares, or shares purchased in the open market.

To the extent that an award terminates, or expires for any reason, or an award is settled in cash without delivery of shares to the participant, then any shares subject to the award may be used again for new grants under the Amended 2010 Plan, provided, that for each share subject to a Full Value Award that so terminated, expired or settled in cash, 2.3 shares shall again become issuable under the Amended 2010 Plan. However, shares which are (i) tendered by the holder or withheld by us in satisfaction of tax withholding obligations, (ii) subject to a stock appreciation right that are not issued in connection with a stock settlement of such right, or (iii) purchased on the open market with the cash proceeds from an option exercise, will not be available for grant under the Amended 2010 Plan. Under the Amended 2010 Plan any restricted stock repurchased by the Company at the same price paid by the participant so that such shares are returned to the Company will again be available for awards. Additionally, the payment of dividend equivalents in cash in conjunction with any outstanding awards will not be counted against the shares available for issuance. To the extent permitted by applicable law or any exchange rule, shares issued in assumption of, or in substitution for, any outstanding awards of any entity acquired in any form of combination by us or any of our subsidiaries or affiliates will not be counted against shares available for issuance under the Amended 2010 Plan.

The maximum aggregate number of shares of common stock that may be subject to one or more awards granted to any one participant pursuant to the Amended 2010 Plan during any calendar year is 250,000. The maximum aggregate amount of cash that may be paid with respect to one or more awards payable in cash that may be granted to any one person pursuant to the Amended 2010 Plan during any calendar year will be \$2,000,000.

### **Awards**

The Amended 2010 Plan provides for the grant of stock options, both incentive stock options and nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock units, performance share awards, dividend equivalents, performance bonus awards and other performance-based awards to eligible individuals. Certain awards under the Amended 2010 Plan may constitute or provide for a deferral of compensation, subject to Section 409A of the Internal Revenue Code, which may impose additional requirements on the terms and conditions of such awards. All awards under the Amended 2010 Plan are or will be set forth in award agreements, which detail the terms and conditions of the awards, including any applicable vesting and payment terms and post-termination exercise limitations. Awards other than cash awards are generally settled in shares of our common stock, but the plan administrator may provide for cash settlement of any award. No determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the Amended 2010 Plan. See the 2011 Summary Compensation Table and Grants of Plan-Based Awards Table in this Proxy Statement, for information on prior awards to our NEOs identified in those tables.

*Stock Options.* Stock options, including incentive stock options, as defined under Section 422 of the Internal Revenue Code, and nonqualified stock options may be granted pursuant to the Amended 2010 Plan. The option exercise price of all stock options granted pursuant to the Amended 2010 Plan will not be less than 100% of the fair market value of the common stock on the date of grant. Stock options may be exercised as determined by the Compensation Committee, but in no event may a stock option have a term extending beyond ten years after the date of grant. Incentive stock options granted to any person who owns, as of the date of grant, stock possessing more than ten percent of the total combined voting power of all classes of Company stock, however, shall have an exercise price that is not less than 110% of the fair market value of the common stock on the date of grant and may not have a term extending beyond the fifth anniversary of the date of grant. The aggregate fair market value of the shares with respect to which options intended to be incentive stock options are exercisable for the first time by an employee in any calendar year may not exceed \$100,000, or such other amount as the Internal Revenue Code provides.

*Stock Appreciation Rights.* Stock appreciation rights may also be granted under the Amended 2010 Plan. Stock appreciation rights, typically will provide for payments to the holder based upon increases in the price of our common stock over the exercise price per share, which will be no less than 100% of the fair market value of our common stock on the date of grant. SARs may be exercised as determined by the Compensation Committee, but in no event may an SAR have a term extending beyond ten years after the date of grant. Upon exercise of a SAR, payment may be made in cash or check or other property acceptable to the Compensation Committee.

*Restricted Stock, Restricted Stock Units and Performance Shares.* Restricted stock is an award of nontransferable shares of our common stock that remain forfeitable unless and until specified conditions are met, and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our common stock in the future, which may also remain forfeitable unless and until specified conditions are met. Delivery of the shares underlying these awards may be deferred under the terms of the award or at the election of the participant if the plan administrator permits such a deferral. Performance shares are contractual rights to receive a number of shares of our common stock in the future based on the attainment of specified performance goals, in addition to other conditions which may apply to these awards. Conditions applicable to restricted stock, RSUs and performance shares may be based on continuing service with us or our affiliates, the attainment of performance goals and/or such other conditions as the plan administrator may determine.

*Performance Bonus Awards and Other Performance-Based Awards.* Performance bonus awards are cash incentive bonuses subject to performance goals. Other performance-based awards are awards other than those enumerated in this summary that are denominated in, linked to or derived from shares of our common stock or value metrics related to our shares, and may remain forfeitable unless and until specified conditions are met.

*Dividend Equivalents.* Dividend equivalents represent the right to receive the equivalent value of dividends paid on shares of our common stock and may be granted alone or in tandem with awards. Dividend equivalents are credited as of dividend payments dates during the period between the date an award is granted and the date such award vests, is exercised, is distributed or expires, as determined by the plan administrator. If stockholders approve this Proposal No. 2, the Amended 2010 Plan will require that any dividend equivalents linked to awards that are subject to performance-based vesting be subject to the same performance-based vesting conditions applicable to the underlying award.

*Performance Awards.* Performance awards include any of the awards that are granted subject to vesting and/or payment based on the attainment of specified performance goals. The Compensation Committee will determine whether performance awards are intended to constitute qualified performance-based compensation, or QPBC, within the meaning of Section 162(m), in which case the applicable performance criteria will be selected from the list below in accordance with the requirements of Section 162(m). In order to constitute QPBC under Section 162(m), in addition to certain other requirements, the relevant amounts must be payable only upon the attainment of pre-established, objective performance goals set by our compensation committee and linked to stockholder-approved performance criteria. For purposes of the Amended 2010 Plan, one or more of the following performance criteria will be used in setting performance goals applicable to QPBC, and may be used in setting performance goals applicable to other performance awards:

gross or net sales or revenue;

net earnings (either before or after one or more of the following: interest, taxes, depreciation and amortization);

operating earnings or profit;

gross or net profit or operating margin;

cash flow (including, but not limited to, operating cash flow and free cash flow);

return on assets;

return on capital;

return on invested capital;

return on stockholders' equity;

return on sales;

earnings per share;

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multiples of price per share to earnings per share ( P/E );

multiples of P/E to growth;

price per share of common stock;

stock price appreciation;

total stockholder return;

economic value added (EVA = net operating profit after taxes a capital charge);

achievement of objectively determinable strategic initiatives;

number of procedures; and

employee productivity.

Any such performance criteria may be measured either in absolute terms for us or any operating unit of our company or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices. The Amended 2010 Plan also permits the plan administrator to provide for objectively determinable adjustments to the applicable performance criteria in setting performance goals for QPBC awards.

The Compensation Committee will determine the methods by which payments by any award holder with respect to any awards may be paid, the form of payment, including, without limitation: (1) cash or check; (2) shares (including in the case of payment of the exercise price of an award, shares issuable pursuant to the exercise of the award) or shares held for such period of time as may be required by the Compensation Committee in order to avoid adverse accounting consequences, in each case, having a fair market value on the date of delivery equal to the aggregate payments required; or (3) other property acceptable to the Compensation Committee (including through the delivery of a notice that the award holder has placed a market sell order with a broker with respect to shares of common stock then issuable upon exercise or vesting of an award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to us in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to us upon settlement of such sale). However, no participant who is a member of the Board of Directors or an executive officer of the Company within the meaning of Section 13(k) of the Exchange Act will be permitted to pay the exercise price of an option in any method which would violate the prohibitions on loans made or arranged by us as set forth in Section 13(k) of the Exchange Act.

### **No Repricing**

In no case (except due to an adjustment to reflect a stock split or similar event or any repricing that may be approved by stockholders) would any adjustment be made to a stock option or a SAR award under the Amended 2010 Plan (by amendment, cancellation and regrant, exchange or other means) that would constitute a repricing of the per-share exercise or base price of the award.

### **Transferability**

Generally, awards granted under the Amended 2010 Plan will not be transferable by a participant other than by will or the laws of descent and distribution or, subject to the consent of the Compensation Committee, pursuant to a domestic relations order. Generally, stock options and SARs will be exercisable during a participant's lifetime only by him or her, unless it has been disposed of pursuant to a domestic relations order; after the death of a participant, any exercisable portion of an option or SAR may be exercised by his personal representative or by any person empowered to do so under the deceased participant's will or under the then applicable laws of descent and distribution. However, the Compensation Committee has the authority to permit a participant to transfer an award other than an incentive stock option to a permitted transferee, subject to the terms and conditions in the Amended 2010 Plan. In no event may an award be transferable for consideration absent stockholder approval.

### **Adjustment Provisions**

Certain transactions with our stockholders not involving our receipt of consideration, such as a stock split, spin-off, stock dividend or certain recapitalizations may affect the share price of our common stock (which transactions are referred to collectively as equity restructurings). In the event that an equity restructuring occurs, our Board of Directors will equitably adjust the class of shares issuable and the maximum number of shares of our stock subject to the Amended 2010 Plan, and will equitably adjust outstanding awards as to the class, number of shares and price per share of our stock. Other types of transactions may also affect our common stock, such as a dividend or other distribution, reorganization, merger, or other changes in corporate structure. In the event that there is such a transaction, which is not an equity restructuring, and our Board of Directors determines that an adjustment to the plan and any outstanding awards would be appropriate to prevent any



dilution or enlargement of benefits under the Amended 2010 Plan, our Board of Directors will equitably adjust the Amended 2010 Plan as to the class of shares issuable and the maximum number of shares of our stock subject to the Amended 2010 Plan, as well as the maximum number of shares that may be issued to an employee during any calendar year, and will adjust any outstanding awards as to the class, number of shares, and price per share of our stock in such manner as it may deem equitable.

### **Effect of Certain Corporate Transactions**

For purposes of the Amended 2010 Plan, a change in control generally means certain transactions in which a person acquires 50% or more of our total voting power; certain changes in the composition of our Board of Directors over a two-year period; a merger or consolidation, other than a merger or consolidation which would result in our voting securities outstanding immediately prior thereto continuing to represent at least 50% of the total voting power represented by our voting securities or such surviving entity's voting securities outstanding immediately after such merger or consolidation (or the voting securities of the parent of the entity which survives such merger or consolidation); a sale or disposition of all or substantially all of our assets, other than a sale or disposition of all or substantially all of our assets to an entity, at least 80% of the combined voting power of the voting securities of which are owned by persons in substantially the same proportions as their ownership of us immediately prior to such sale; or approval by our stockholders of a plan of complete liquidation. The Board, in its sole discretion, may adopt a change in control program to determine the vesting schedule, exercisability and other terms of outstanding awards on or after a change in control.

### **Amendment and Termination**

The Compensation Committee or our Board of Directors may terminate, amend, or modify the Amended 2010 Plan at any time; however, stockholder approval will be obtained for any amendment to increase the number of shares available under the Amended 2010 Plan. In addition, absent stockholder approval, no option or SAR may be amended to reduce the per share exercise price of the shares subject to such option or SAR below the per share exercise price as of the date the option or SAR was granted and, except to the extent permitted by the Amended 2010 Plan in connection with certain changes in capital structure, no option, SAR, cash or other award may be granted in exchange for, or in connection with, the cancellation or surrender of an option or SAR having a higher per share exercise price.

In no event may an award be granted pursuant to the Amended 2010 Plan on or after the tenth anniversary of the date the Board of Directors approved the Amended 2010 Plan.

### **Federal Income Tax Consequences**

The following is a general summary under current U.S. law of the material federal income tax consequences with respect to the Amended 2010 Plan. This summary deals with the general U.S. tax principles that apply and is provided only for general information. Some kinds of taxes, such as foreign, state and local income taxes, as well as gift and estate tax considerations, are not discussed. Tax laws are complex and subject to change and may vary depending on individual circumstances and from locality to locality, and the summary does not discuss all aspects of income taxation that may be relevant in light of a holder's personal investment circumstances.

With respect to nonqualified stock options, we are generally entitled to deduct, and the optionee recognizes taxable income in an amount equal to, the difference between the option exercise price and the fair market value of the shares at the time of exercise. A participant receiving incentive stock options will not recognize taxable income upon grant. Additionally, if applicable holding period requirements are met, the participant will not recognize taxable income at the time of exercise. However, the excess of the fair market value of the common stock received over the option price is an item of tax preference income potentially subject to the alternative minimum tax. If stock acquired upon exercise of an incentive stock option is held for a minimum of two years from the date of grant and one year from the date of exercise, the gain or loss (in an amount equal to the

difference between the fair market value on the date of sale and the exercise price) upon disposition of the stock will be treated as a long-term capital gain or loss, and we will not be entitled to any deduction. If the holding period requirements are not met, the incentive stock option will be treated as one that does not meet the requirements of the Internal Revenue Code for incentive stock options and the tax consequences described for nonqualified stock options will apply.

The current federal income tax consequences of other awards authorized under the Amended 2010 Plan generally follow certain basic patterns: SARs are taxed and deductible in substantially the same manner as nonqualified stock options; nontransferable restricted stock subject to a substantial risk of forfeiture and restricted stock units will result in income recognition equal to the excess of the fair market value over the price paid, if any, only at the time the restrictions applicable to such awards lapse (unless, with respect to an award of restricted stock, the recipient elects to accelerate recognition as of the date of grant); stock-based performance awards, dividend equivalents and other types of awards are generally subject to tax at ordinary income rates at the time of payment. In each of the foregoing cases, the Company will generally have a corresponding deduction at the time the participant recognizes income, subject to Section 162(m) of the Code with respect to covered employees.

The Amended 2010 Plan is designed to meet the requirements of Section 162(m) for grants of awards. There can be no assurance that compensation attributable to awards granted under the Amended 2010 Plan will be treated as qualified performance-based compensation under Section 162(m) and thus be deductible to us.

### **New Plan Benefits**

As of January 31, 2013, 2,268,224 shares subject to options awards had been granted pursuant to the 2010 Plan. Awards, if any, to be granted to officers, employees and consultants are determined from time to time by the Compensation Committee and are not presently determinable.

As of January 31, 2013, the number of options received at any time under the 2010 Plan to date by Dr. Guthart, and Messrs. McNamara, Mohr, Meltzer and Rosa was 59,875, 47,500, 30,000, 30,000 and 30,000, respectively; by all current executive officers as a group was 321,375; by all current directors who were not executive officers as a group was 0; by Mr. Smith was 10,000; by each other person who received or was to receive 5 percent of such options or rights was 0; by all employees who were not executive officers as a group was 2,060,849.

Beginning 2012, options are granted bi-annually on February 15<sup>th</sup> and August 15<sup>th</sup>. On February 15, 2013, the number of options received under the 2010 Plan by Dr. Guthart, and Messrs. McNamara, Mohr, Meltzer and Rosa was 7,500, 7,000, 6,000, 6,000 and 6,000, respectively; by all current executive officers as a group was 54,250; by all current directors who were not executive officers as a group was 0; by each associate of any of such directors, executive officers or nominees was 0; by each other person who received 5 percent of such options or rights was 0; by all employees who were not executive officers as a group was 561,164. The number of options to be granted on August 15<sup>th</sup>, 2013 will be determined at a future date.

### **Vote Required**

Approval of the Amended 2010 Plan requires the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal.

### **Recommendation of the Board**

**The Board recommends that stockholders vote for the amendment and restatement of the 2010 Incentive Award Plan to increase the number of shares of common stock reserved for the issuance pursuant to stock option awards under the 2010 Incentive Award Plan from 3,650,000 to 4,850,000 and to provide the other benefits set forth above.**

**PROPOSAL NO. 3**

**ADVISORY APPROVAL OF THE COMPENSATION OF NAMED EXECUTIVE OFFICERS**

The Company's goal for its executive compensation program is to attract and retain a talented, entrepreneurial and creative team of executives who will provide leadership for the Company's success in driving *da Vinci* Surgery to the broadest number of patients. The Company accomplishes this goal in a manner consistent with its strategy, competitive practice, sound corporate governance principles, and stockholder interests and concerns. The Company believes the compensation program for the NEOs is strongly aligned with the long-term interests of its stockholders and was instrumental in helping the Company achieve strong financial performance in 2012.

At the Company's annual meeting of stockholders last year, our stockholders approved the compensation of our NEOs, with over an 80% approval rate. The Compensation Committee continues to apply the same principles and philosophy it has used in previous years in determining executive compensation. It will continue to consider stockholder concerns and feedback in the future. The Compensation Committee is continuously working to ensure that management's interests are aligned with our stockholders' interests to support long-term value creation and will continue to consider the outcome of the Company's say-on-pay votes when making future compensation decisions for the NEOs.

Stockholders are urged to read the Executive Compensation section of this Proxy Statement, including the Compensation Discussion and Analysis ( CD&A ) section which discusses the Company's compensation policies and procedures, and the 2012 compensation for the Company's NEOs. The Compensation Committee and the Board believe that the Company's compensation policies and procedures are effective in achieving the Company's goals and are consistent with stockholder interests.

The Company has determined to hold a separate stockholder vote on the compensation of our NEOs every year; and, therefore, as a matter of good corporate governance and in accordance with Section 14A of the Exchange Act, we are including in this Proxy Statement a separate stockholder vote on the approval of executive compensation, which vote is non-binding. Accordingly, we are asking you to approve, on an advisory basis, the compensation of the Company's NEOs, as described in the Executive Compensation section of this Proxy Statement, including the CD&A and the related compensation tables and other narrative executive compensation disclosure contained therein.

The following resolution will be submitted for a stockholder vote at the Annual Meeting:

RESOLVED, that the stockholders of Intuitive Surgical approve, on an advisory basis, the compensation of Intuitive Surgical's named executive officers, as disclosed in the Compensation Discussion and Analysis, compensation tables and narrative discussion of this Proxy Statement.

Although the advisory vote is non-binding, the Compensation Committee and the Board will review the results of the vote. The Compensation Committee will consider our stockholders' concerns to the extent there is any significant vote against the NEO compensation as disclosed in this Proxy Statement and take them into account in future determinations concerning our executive compensation program. Unless the Compensation Committee or the Board modifies the Company's determination in the frequency of future advisory stockholder votes on the compensation of NEOs, the next advisory board vote will be held at the 2014 annual meeting of stockholders.

The Board therefore recommends that you indicate your support for the Company's compensation policies and procedures for its NEOs, as outlined above.

**Recommendation of the Board**

**The Board recommends that stockholders vote, on an advisory basis, FOR the approval of the named executive officers' compensation described in the CD&A, the compensation tables and the narrative discussion of this Proxy Statement.**

**PROPOSAL NO. 4**

**THE RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Company's independent registered public accounting firm and its auditors for the year ended December 31, 2012 were Ernst & Young LLP (EY). At the Annual Meeting, the stockholders are being asked to ratify the appointment of EY as the Company's independent registered public accounting firm for 2013. In the event of a negative vote on such ratification, the Audit Committee will reconsider its selection. Even if this appointment is ratified, the Audit Committee, in its discretion, may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee determines that such a change would be in the best interest of the Company and its stockholders. Representatives of EY are expected to be present at the Annual Meeting and to respond to appropriate questions.

**Vote Required**

Approval of Proposal No. 4 requires the affirmative vote of a majority of the shares present or represented by proxy and voting at the Annual Meeting and entitled to vote on the proposal.

**Recommendation of the Board**

**The Board recommends a vote FOR the ratification of the appointment of independent registered public accounting firm.**

**OTHER INFORMATION**

**Other Matters at the Annual Meeting**

We do not know of any matters to be presented at the Annual Meeting other than those mentioned in this Proxy Statement. If any other matters are properly brought before the Annual Meeting, it is intended that the proxies will be voted in accordance with the best judgment of the person or persons voting the proxies.

**Security Holder Communication with Board Members**

Any holder of our securities may contact the Board of Directors or a specified individual director by writing to the attention of the Board of Directors or a specified individual director and sending such communication to our investor relations department at our executive offices as identified in this Proxy Statement. Each communication from a security holder should include the following information in order to permit security holder status to be confirmed and to provide an address to forward a response if deemed appropriate:

the name, mailing address and telephone number of the security holder sending the communication;

the number and type of our securities owned by such security holder; and

if the security holder is not a record owner of our securities, the name of the record owner of our securities beneficially owned by the security holder.

Our investor relations department will forward all appropriate communications to the Board of Directors or individual members of the Board of Directors as specified in the communication. Our investor relations department may (but is not required to) review all correspondence addressed to the Board of Directors, or any individual member of the Board of Directors, for any inappropriate correspondence more suitably directed to management. Communications may be deemed inappropriate for this purpose if it is reasonably apparent from the face of the correspondence that it relates principally to a customer dispute involving the purchase of goods or services from our Company or any of our operating units. Our policies regarding the handling of security holder communications were approved by a majority of our independent directors.

**Exhibit A**

**AMENDED AND RESTATED**

**INTUITIVE SURGICAL, INC. 2010 INCENTIVE AWARD PLAN**

**(As Adopted by the Board of Directors on February 4, 2010)**

**(Amendment and Restatement Adopted by the Board of Directors on February 3, 2011)**

**(Approved by the Shareholders on April 21, 2011)**

**(Amendment and Restatement Adopted by the Board of Directors on February 2, 2012)**

**(Amendment and Restatement Adopted by the Board of Directors on January 31, 2013)**

**ARTICLE 1.**

**PURPOSE**

The purpose of the Intuitive Surgical, Inc. 2010 Incentive Award Plan (the Plan ) is to promote the success and enhance the value of Intuitive Surgical, Inc. (the Company ) by linking the individual interests of the members of the Board, Employees, and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide an ability to motivate, attract and retain the services of members of the Board, Employees and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

**ARTICLE 2.**

**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan, they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 Administrator shall mean the entity that conducts the general administration of the Plan as provided in Article 12. With reference to the duties of the Committee under the Plan which have been delegated to one or more persons pursuant to Section 12.6, or as to which the Board has assumed, the term Administrator shall refer to such person(s) unless the Committee or the Board has revoked such delegation or the Board has terminated the assumption of such duties.

2.2 Affiliate shall mean (a) Subsidiary; and (b) any domestic eligible entity that is disregarded, under Treasury Regulation Section 301.7701-3, as an entity separate from either (i) the Company or (ii) any Subsidiary.

2.3 Applicable Accounting Standards shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company's financial statements under United States federal securities laws from time to time.

2.4 Award shall mean an Option, a Restricted Stock award, a Restricted Stock Unit award, a Performance Award, a Dividend Equivalent award or a Stock Appreciation Right, which may be awarded or granted under the Plan (collectively, Awards ).

2.5 Award Agreement shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

2.6 Award Limit shall mean with respect to Awards that shall be payable in Shares or in cash, as the case may be, the respective limit set forth in Section 3.3.



2.7 Board shall mean the Board of Directors of the Company.

2.8 Change in Control shall mean and includes each of the following:

(a) Any person (as such term is used in Section 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(b) A change in the composition of the Board occurring within a two-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. Incumbent Directors shall mean directors who either (A) are directors of the Company as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(c) There is consummated a merger or consolidation of the Company with or into any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or the parent of the entity which survives such merger or consolidation; or

(d) The stockholders of the Company approve a plan of complete liquidation of the Company or there is consummated the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least eighty percent (80%) of the combined voting power of the voting securities of which are owned by persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

In addition, if a Change in Control constitutes a payment event with respect to any Award which provides for the deferral of compensation and is subject to Section 409A of the Code, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award must also constitute a change in control event, as defined in Treasury Regulation §1.409A-3(i)(5) to the extent required by Section 409A.

The Committee shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

2.9 Code shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder.

2.10 Committee shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board, appointed as provided in Section 12.1.

2.11 Common Stock shall mean the common stock of the Company, par value \$0.001 per share.

2.12 Company shall mean Intuitive Surgical, Inc., a Delaware corporation.

2.13 Consultant shall mean any consultant or adviser engaged to provide services to the Company or any Affiliate that qualifies as a consultant under the applicable rules of the Securities and Exchange Commission for registration of shares on a Form S-8 Registration Statement.

2.14 Covered Employee shall mean any Employee who is, or could be, a covered employee within the meaning of Section 162(m) of the Code.



- 2.15 Director shall mean a member of the Board, as constituted from time to time.
- 2.16 Dividend Equivalent shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 9.2.
- 2.17 DRO shall mean a domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.
- 2.18 Effective Date shall mean the date the Plan is approved by the Board, subject to approval of the Plan by the Company's stockholders.
- 2.19 Eligible Individual shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Committee.
- 2.20 Employee shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company or of any Affiliate.
- 2.21 Equity Restructuring shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of shares of Common Stock (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of the Common Stock underlying outstanding Awards.
- 2.22 Exchange Act shall mean the Securities Exchange Act of 1934, as amended from time to time.
- 2.23 Fair Market Value shall mean, as of any given date, the value of a Share determined as follows:
- (a) If the Common Stock is listed on any (i) established securities exchange (such as the New York Stock Exchange, the NASDAQ Global Market and the NASDAQ Global Select Market), (ii) national market system or (iii) automated quotation system on which the Shares are listed, quoted or traded, its Fair Market Value shall be the closing sales price for a share of Common Stock as quoted on such exchange or system for such date or, if there is no closing sales price for a share of Common Stock on the date in question, the closing sales price for a share of Common Stock on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;
- (b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a share of Common Stock on such date, the high bid and low asked prices for a share of Common Stock on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or
- (c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in good faith.
- 2.24. Full Value Award shall mean any Award other than (i) an Option, (ii) a Stock Appreciation Right or (iii) any other Award for which the Holder pays the intrinsic value existing as of the date of grant (whether directly or by forgoing a right to receive a payment from the Company or any Affiliate).
- 2.25 Greater Than 10% Stockholder shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.26 Holder shall mean a person who has been granted an Award.

2.27 Incentive Stock Option shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.28 Non-Employee Director shall mean a Director of the Company who is not an Employee.

2.29 Non-Qualified Stock Option shall mean an Option that is not an Incentive Stock Option.

2.30 Option shall mean a right to purchase Shares at a specified exercise price, granted under Article 6. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.31 Parent shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities ending with the Company if each of the entities other than the Company beneficially owns, at the time of the determination, securities or interests representing more than fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.32 Performance Award shall mean a cash bonus award, stock bonus award, performance award or incentive award that is paid in cash, Shares or a combination of both, awarded under Section 9.1.

2.33 Performance-Based Compensation shall mean any compensation that is intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code.

2.34 Performance Criteria shall mean the criteria (and adjustments) that the Committee selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period, determined as follows:

(a) The Performance Criteria that shall be used to establish Performance Goals are limited to the following:

(i) gross or net sales or revenue;

(ii) net earnings (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization);

(iii) operating earnings or profit;

(iv) gross or net profit or operating margin;

(v) cash flow (including, but not limited to, operating cash flow and free cash flow);

(vi) return on assets;

(vii) return on capital;

(viii) return on invested capital;

(ix) return on stockholders' equity;

(x) return on sales;

(xi) earnings per share;

(xii) multiples of price per share to earnings per share ( P/E );



- (xiii) multiples of P/E to growth;
- (xiv) price per share of Common Stock;
- (xv) stock price appreciation;
- (xvi) total stockholder return;
- (xvii) economic value added (EVA = net operating profit after taxes a capital charge);
- (xviii) achievement of objectively determinable strategic initiatives;
- (xix) number of procedures and
- (xx) employee productivity,

any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices.

(b) The Administrator may, in its sole discretion, provide that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals. Such adjustments may include one or more of the following: (i) items related to a change in accounting principle; (ii) items relating to financing activities; (iii) expenses for restructuring or productivity initiatives; (iv) other non-operating items; (v) items related to acquisitions; (vi) items attributable to the business operations of any entity acquired by the Company during the Performance Period; (vii) items related to the disposal of a business or segment of a business; (viii) items related to discontinued operations that do not qualify as a segment of a business under Applicable Accounting Standards; (ix) items attributable to any stock dividend, stock split, combination or exchange of stock occurring during the Performance Period; (x) any other items of significant income or expense which are determined to be appropriate adjustments; (xi) items relating to unusual or extraordinary corporate transactions, events or developments, (xii) items related to amortization of acquired intangible assets; (xiii) items that are outside the scope of the Company's core, on-going business activities; (xiv) items related to acquired in-process research and development; (xv) items relating to changes in tax laws; (xvi) items relating to major licensing or partnership arrangements; (xvii) items relating to asset impairment charges; (xviii) items relating to gains or losses for litigation, arbitration and contractual settlements; (xix) items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions; or (xx) non-cash items. For all Awards intended to qualify as Performance-Based Compensation, such determinations shall be made within the time prescribed by, and otherwise in compliance with, Section 162(m) of the Code.

2.35 Performance Goals shall mean, for a Performance Period, one or more goals established in writing by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a Subsidiary, division, business unit, or an individual.

2.36 Performance Period shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder's right to, and the payment of, a Performance Award.

2.37 Permitted Transferee shall mean, with respect to a Holder, any family member of the Holder, as defined under the instructions to use of the Form S-8 Registration Statement under the Securities Act, after taking into account any state, federal, local or foreign tax and securities laws applicable to transferable Awards.

2.38 Plan shall mean this Intuitive Surgical, Inc. 2010 Incentive Award Plan, as it may be amended or restated from time to time.

2.39 Program shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.40 Restricted Stock shall mean Common Stock awarded under Article 8 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.41 Restricted Stock Units shall mean the right to receive Shares awarded under Section 9.3.

2.42 Securities Act shall mean the Securities Act of 1933, as amended.

2.43 Shares shall mean shares of Common Stock.

2.44 Stock Appreciation Right shall mean a stock appreciation right granted under Article 10.

2.45 Subsidiary shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing more than fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.46 Substitute Award shall mean an Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term Substitute Award be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.47 Termination of Service shall mean,

(a) As to a Consultant, the time when the engagement of a Holder as a Consultant to the Company or an Affiliate is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding terminations where the Consultant simultaneously commences or remains in employment or service with the Company or any Affiliate.

(b) As to a Non-Employee Director, the time when a Holder who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

(c) As to an Employee, the time when the employee-employer relationship between a Holder and the Company or any Affiliate is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or retirement; but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to Terminations of Service, including, without limitation, the question of whether a Termination of Service resulted from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of the Program, the Award Agreement or otherwise, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the

Code and the then applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder's employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Holder ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

### ARTICLE 3.

#### SHARES SUBJECT TO THE PLAN

##### 3.1 Number of Shares.

(a) Subject to Section 13.2 and Section 3.1(b), the aggregate number of Shares which may be issued or transferred pursuant to Awards under the Plan is 4,850,000; *provided however*, that any Shares that are subject to Awards of Options or Stock Appreciation Rights shall be counted against this limit as one (1) Share for every one (1) Share granted and any Shares that are subject to Full Value Awards shall be counted against this limit as 2.3 Shares for every one (1) Share granted.

(b) If any Shares subject to an Award are forfeited or expire or such Award is settled for cash (in whole or in part), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan, *provided*, that for each Share subject to a Full Value Award that is so forfeited, expired or settled in cash, 2.3 Shares shall be again become available for future grants of Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 3.1(a) and will not be available for future grants of Awards: (i) Shares tendered by the Holder or withheld by the Company in payment of the exercise price of an Option or to satisfy any tax withholding obligation with respect to an Award; (ii) Shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof; and (iii) Shares purchased on the open market with the cash proceeds from the exercise of Options. Any Shares repurchased by the Company under Section 8.4 at the same price paid by the Holder so that such shares are returned to the Company will again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards shall not reduce the Shares authorized for grant under the Plan. Additionally, in the event that a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Subsidiaries immediately prior to such acquisition or combination.

3.2 Stock Distributed. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Section 13.2, the maximum aggregate amount of cash that may be paid with respect to one or more Awards payable in cash that may be granted to any one person during any calendar year shall be

\$2,000,000 and the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during any calendar year shall be 250,000. To the extent required by Section 162(m) of the Code, Shares subject to Awards which are canceled shall continue to be counted against the Award Limit.

#### ARTICLE 4.

#### GRANTING OF AWARDS

4.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals, those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. No Eligible Individual shall have any right to be granted an Award pursuant to the Plan.

4.2 Award Agreement. Each Award shall be evidenced by an Award Agreement. Award Agreements evidencing Awards intended to qualify as Performance-Based Compensation shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code.

4.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

4.4 At-Will Employment. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Affiliate, or shall interfere with or restrict in any way the rights of the Company and any Affiliate, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Affiliate.

4.5 Foreign Holders. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange, the Administrator, in its sole discretion, shall have the power and authority to: (a) determine which Subsidiaries shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws or listing requirements of any such foreign securities exchange; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to the Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1 and 3.3; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign securities exchange. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Code, the Exchange Act, the Securities Act, any other securities law or governing statute, the rules of the securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law.

4.6 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the sole discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

## ARTICLE 5

### PROVISIONS APPLICABLE TO AWARDS INTENDED TO QUALIFY AS PERFORMANCE-BASED COMPENSATION

5.1 Purpose. The Committee, in its sole discretion, may determine at the time an Award is granted or at any time thereafter whether such Award is intended to qualify as Performance-Based Compensation. If the Committee, in its sole discretion, decides to grant such an Award to an Eligible Individual that is intended to qualify as Performance-Based Compensation, then the provisions of this Article 5 shall control over any contrary provision contained in the Plan. The Administrator may in its sole discretion grant Awards to other Eligible Individuals that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 5 and that are not intended to qualify as Performance-Based Compensation.

5.2 Applicability. The grant of an Award to an Eligible Individual for a particular Performance Period shall not require the grant of an Award to such Individual in any subsequent Performance Period and the grant of an Award to any one Eligible Individual shall not require the grant of an Award to any other Eligible Individual in such period or in any other period.

5.3 Types of Awards. Notwithstanding anything in the Plan to the contrary, the Committee may grant any Award to an Eligible Individual intended to qualify as Performance-Based Compensation, including, without limitation, Restricted Stock the restrictions with respect to which lapse upon the attainment of specified Performance Goals, and any Performance Awards described in Article 9 that vest or become exercisable or payable upon the attainment of one or more specified Performance Goals.

5.4 Procedures with Respect to Performance-Based Awards. To the extent necessary to comply with the requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted under Articles 8 or 9 to one or more Eligible Individuals and which is intended to qualify as Performance-Based Compensation, no later than 90 days following the commencement of any Performance Period or any designated fiscal period or period of service (or such earlier time as may be required under Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Eligible Individuals, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period based on the Performance Criteria, and (d) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether and the extent to which the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned under such Awards, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant, including the assessment of individual or corporate performance for the Performance Period.

5.5 Payment of Performance-Based Awards. Unless otherwise provided in the applicable Program or Award Agreement and only to the extent otherwise permitted by Section 162(m)(4)(C) of the Code, as to an Award that is intended to qualify as Performance-Based Compensation, the Holder must be employed by the Company or an Affiliate throughout the Performance Period. Unless otherwise provided in the applicable Performance Goals, Program or Award Agreement, a Holder shall be eligible to receive payment pursuant to such Awards for a Performance Period only if and to the extent the Performance Goals for such period are achieved.



5.6 Additional Limitations. Notwithstanding any other provision of the Plan and except as otherwise determined by the Administrator, any Award which is granted to an Eligible Individual and is intended to qualify as Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code or any regulations or rulings issued thereunder that are requirements for qualification as Performance-Based Compensation, and the Plan, the Program and the Award Agreement shall be deemed amended to the extent necessary to conform to such requirements.

## ARTICLE 6.

### GRANTING OF OPTIONS

6.1 Granting of Options to Eligible Individuals. The Administrator is authorized to grant Options to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine which shall not be inconsistent with the Plan.

6.2 Qualification of Incentive Stock Options. No Incentive Stock Option shall be granted to any person who is not an Employee of the Company or any Affiliate corporation of the Company (as defined in Section 424(f) of the Code). No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. Any Incentive Stock Option granted under the Plan may be modified by the Administrator, with the consent of the Holder, to disqualify such Option from treatment as an incentive stock option under Section 422 of the Code. To the extent that the aggregate fair market value of stock with respect to which incentive stock options (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any Affiliate or parent corporation thereof (each as defined in Section 424(f) and (e) of the Code, respectively), exceeds \$100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the preceding sentence shall be applied by taking Options and other incentive stock options into account in the order in which they were granted and the Fair Market Value of stock shall be determined as of the time the respective options were granted.

6.3 Option Exercise Price. The exercise price per Share subject to each Option shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code).

6.4 Option Term. The term of each Option shall be set by the Administrator in its sole discretion; provided, however, that the term shall not be more than ten (10) years from the date the Option is granted, or five (5) years from the date an Incentive Stock Option is granted to a Greater Than 10% Stockholder. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Options, which time period may not extend beyond the term of the Option term. Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder, the Administrator may extend the term of any outstanding Option, and may extend the time period during which vested Options may be exercised, in connection with any Termination of Service of the Holder, and may amend any other term or condition of such Option relating to such a Termination of Service.

6.5 Option Vesting.

(a) The period during which the right to exercise, in whole or in part, an Option vests in the Holder shall be set by the Administrator and the Administrator may determine that an Option may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, any Performance Criteria, or any other criteria selected by the Administrator.

(b) No portion of an Option which is unexercisable at a Holder's Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the Program, the Award Agreement or by action of the Administrator following the grant of the Option.

6.6 Substitute Awards. Notwithstanding the foregoing provisions of this Article 6 to the contrary, in the case of an Option that is a Substitute Award, the price per share of the shares subject to such Option may be less than the Fair Market Value per share on the date of grant, provided, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

6.7 Substitution of Stock Appreciation Rights. The Administrator may provide in the applicable Program or the Award Agreement evidencing the grant of an Option that the Administrator, in its sole discretion, shall have the right to substitute a Stock Appreciation Right for such Option at any time prior to or upon exercise of such Option; provided, that such Stock Appreciation Right shall be exercisable with respect to the same number of Shares for which such substituted Option would have been exercisable.

## ARTICLE 7.

### EXERCISE OF OPTIONS

7.1 Partial Exercise. An exercisable Option may be exercised in whole or in part. However, an Option shall not be exercisable with respect to fractional shares and the Administrator may require that, by the terms of the Option, a partial exercise must be with respect to a minimum number of shares.

7.2 Manner of Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations, the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Option shall be exercised pursuant to Section 11.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes to the stock administrator of the Company for the shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Section 11.1 and 11.2.

7.3 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition of shares of Common Stock acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the transfer of such shares to such Holder.

**ARTICLE 8.**

**AWARD OF RESTRICTED STOCK**

8.1 Award of Restricted Stock.

(a) The Administrator is authorized to grant Restricted Stock to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

(b) The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value of the Shares to be purchased, unless otherwise permitted by applicable state law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.

8.2 Rights as Stockholders. Subject to Section 8.4, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all the rights of a stockholder with respect to said shares, subject to the restrictions in the applicable Program or in each individual Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the shares; provided, however, that, in the sole discretion of the Administrator, any extraordinary distributions with respect to the Shares shall be subject to the restrictions set forth in Section 8.3. In addition, with respect to a share of Restricted Stock with performance-based vesting, dividends which are paid prior to vesting shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the share of Restricted Stock vests.

8.3 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of the applicable Program or in each individual Award Agreement, be subject to such restrictions and vesting requirements as the Administrator shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Administrator, including, without limitation, criteria based on the Holder's duration of employment, directorship or consultancy with the Company, the Performance Criteria, Company performance, individual performance or other criteria selected by the Administrator. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire.

8.4 Repurchase or Forfeiture of Restricted Stock. If no price was paid by the Holder for the Restricted Stock, upon a Termination of Service the Holder's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the Program or the Award Agreement. The Administrator in its sole discretion may provide that in the event of certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service or any other event, the Holder's rights in unvested Restricted Stock shall not lapse, such Restricted Stock shall vest and, if applicable, the Company shall not have a right of repurchase.

8.5 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. Certificates or book entries evidencing shares of Restricted Stock must include an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, in its sole discretion, retain physical possession of any stock certificate until such time as all applicable restrictions lapse.

8.6 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service.

## ARTICLE 9.

### AWARD OF PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, RESTRICTED STOCK UNITS

#### 9.1 Performance Awards.

(a) The Administrator is authorized to grant Performance Awards to any Eligible Individual and to determine whether such Performance Awards shall be Performance-Based Compensation. The value of Performance Awards may be linked to any one or more of the Performance Criteria or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Performance Awards may be paid in cash, Shares, or both, as determined by the Administrator.

(b) Without limiting Section 9.1(a), the Administrator may grant Performance Awards to any Eligible Individual in the form of a cash bonus payable upon the attainment of objective Performance Goals, or such other criteria, whether or not objective, which are established by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Any such bonuses paid to a Holder which are intended to be Performance-Based Compensation shall be based upon objectively determinable bonus formulas established in accordance with the provisions of Article 5.

#### 9.2 Dividend Equivalents.

(a) Dividend Equivalents may be granted by the Administrator based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award is granted to a Holder and the date such Award vests, is exercised, is distributed or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional shares of Common Stock by such formula and at such time and subject to such limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award with performance-based vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the Award vests.

(b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

9.3 Restricted Stock Units. The Administrator is authorized to grant Restricted Stock Units to any Eligible Individual. The number and terms and conditions of Restricted Stock Units shall be determined by the Administrator. The Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including conditions based on one or more Performance Criteria or other specific criteria, including service to the Company or any Affiliate, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. The Administrator shall specify, or permit the Holder to elect, the conditions and dates upon which the Shares underlying the Restricted Stock Units which shall be issued, which dates shall not be earlier than the date as of which the Restricted Stock Units vest and become nonforfeitable and which conditions and dates shall be subject to compliance with Section 409A of the Code. Restricted Stock Units may be paid in cash, Shares, or both, as determined by the Administrator. On the distribution dates, the Company shall issue to the Holder one unrestricted, fully transferable Share (or the Fair Market Value of one such Share in cash) for each vested and nonforfeitable Restricted Stock Unit.

9.4 Term. The term of a Performance Award, Dividend Equivalent award and/or Restricted Stock Unit award shall be set by the Administrator in its sole discretion.

9.5 Exercise or Purchase Price. The Administrator may establish the exercise or purchase price of a Performance Award or shares distributed pursuant to a Restricted Stock Unit award; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by applicable law.

9.6 Exercise upon Termination of Service. A Performance Award, Dividend Equivalent award, and/or Restricted Stock Unit award is exercisable or distributable only while the Holder is an Employee, Director or Consultant, as applicable. The Administrator, however, in its sole discretion may provide that the Performance Award, Dividend Equivalent award and/or Restricted Stock Unit award may be exercised or distributed subsequent to a Termination of Service in certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service.

## ARTICLE 10.

### AWARD OF STOCK APPRECIATION RIGHTS

#### 10.1 Grant of Stock Appreciation Rights.

(a) The Administrator is authorized to grant Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine consistent with the Plan.

(b) A Stock Appreciation Right shall entitle the Holder (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise price per share of the Stock Appreciation Right from the Fair Market Value on the date of exercise of the Stock Appreciation Right by the number of Shares with respect to which the Stock Appreciation Right shall have been exercised, subject to any limitations the Administrator may impose. Except as described in (c) below, the exercise price per Share subject to each Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value on the date the Stock Appreciation Right is granted.

(c) Notwithstanding the foregoing provisions of Section 10.1(b) to the contrary, in the case of a Stock Appreciation Right that is a Substitute Award, the price per share of the shares subject to such Stock Appreciation Right may be less than 100% of the Fair Market Value per share on the date of grant; provided, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

#### 10.2 Stock Appreciation Right Vesting.

(a) The period during which the right to exercise, in whole or in part, a Stock Appreciation Right vests in the Holder shall be set by the Administrator and the Administrator may determine that a Stock Appreciation Right may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, or any other criteria selected by the Administrator.

(b) No portion of a Stock Appreciation Right which is unexercisable at Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the applicable Program or Award Agreement or by action of the Administrator following the grant of the Stock Appreciation Right.

10.3 Manner of Exercise. All or a portion of an exercisable Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the stock administrator of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Stock Appreciation Right, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Stock Appreciation Right or such portion of the Stock Appreciation Right;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance; and

(c) In the event that the Stock Appreciation Right shall be exercised pursuant to this Section 10.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Stock Appreciation Right.

10.4 Stock Appreciation Right Term. The term of each Stock Appreciation Right shall be set by the Administrator in its sole discretion; provided, however, that the term shall not be more than ten (10) years from the date the Stock Appreciation Right is granted. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Stock Appreciation Rights, which time period may not extend beyond the expiration date of the Stock Appreciation Right term. Except as limited by the requirements of Section 409A of the Code and regulations and rulings thereunder, the Administrator may extend the term of any outstanding Stock Appreciation Right, and may extend the time period during which vested Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder, and may amend any other term or condition of such Stock Appreciation Right relating to such a Termination of Service.

10.5 Payment. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 10 shall be in cash or check or other form of legal consideration acceptable to the Administrator, as determined by the Administrator.

## ARTICLE 11.

### ADDITIONAL TERMS OF AWARDS

11.1 Payment. The Administrator shall determine the methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation: (a) cash or check, (b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required, provided, that payment of such proceeds is then made to the Company upon settlement of such sale, or (d) other form of legal consideration acceptable to the Administrator. The

Administrator shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an executive officer of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

11.2 Tax Withholding. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder's FICA or employment tax obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan. The Administrator may in its sole discretion and in satisfaction of the foregoing requirement allow a Holder to elect to have the Company withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of shares which have a fair market value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

11.3 Transferability of Awards.

(a) Except as otherwise provided in Section 11.3(b):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised, or the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed;

(ii) No Award or interest or right therein shall be liable for the debts, contracts or engagements of the Holder or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence; and

(iii) During the lifetime of the Holder, only the Holder may exercise an Award (or any portion thereof) granted to him under the Plan, unless it has been disposed of pursuant to a DRO; after the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by his personal representative or by any person empowered to do so under the deceased Holder's will or under the then applicable laws of descent and distribution.

(b) Notwithstanding Section 11.3(a), the Administrator, in its sole discretion, may determine to permit a Holder to transfer an Award other than an Incentive Stock Option to any one or more Permitted Transferees, subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award); and (iii) the Holder and the Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee,

(B) satisfy any requirements for an exemption for the transfer under applicable federal, state and foreign securities laws and (C) evidence the transfer. In no event may an Award be transferable for consideration absent stockholder approval.

(c) Notwithstanding Section 11.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder, except to the extent the Plan, the Program and the Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married and resides in a community property state, a designation of a person other than the Holder's spouse as his or her beneficiary with respect to more than 50% of the Holder's interest in the Award shall not be effective without the prior written or electronic consent of the Holder's spouse. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time provided the change or revocation is filed with the Administrator prior to the Holder's death.

#### 11.4 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Board or the Committee has determined, with advice of counsel, that the issuance of such shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the Shares are listed or traded, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Board or the Committee may require that a Holder make such reasonable covenants, agreements and representations as the Board or the Committee, in its discretion, deems advisable in order to comply with any such laws, regulations or requirements.

(b) All Share certificates delivered pursuant to the Plan and all shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state, or foreign securities or other laws, rules and regulations and the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Administrator may place legends on any Share certificate or book entry to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) No fractional Shares shall be issued and the Administrator shall determine, in its sole discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding down.

(e) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by any applicable law, rule or regulation, the Company shall not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

11.5 Forfeiture Provisions. Pursuant to its general authority to determine the terms and conditions applicable to Awards under the Plan, the Administrator shall have the right to provide, in the terms of Awards made under the Plan, or to require a Holder to agree by separate written or electronic instrument, that: (a)(i) any proceeds,



gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of the Award, or upon the receipt or resale of any Shares underlying the Award, must be paid to the Company, and (ii) the Award shall terminate and any unexercised portion of the Award (whether or not vested) shall be forfeited, if (b)(i) a Termination of Service occurs prior to a specified date, or within a specified time period following receipt or exercise of the Award, or (ii) the Holder at any time, or during a specified time period, engages in any activity in competition with the Company, or which is inimical, contrary or harmful to the interests of the Company, as further defined by the Administrator or (iii) the Holder incurs a Termination of Service for cause (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company and the Holder).

11.6 Prohibition on Repricing. Subject to Section 13.2, the Administrator shall not, without the approval of the stockholders of the Company, (i) authorize the amendment of any outstanding Option or Stock Appreciation Right to reduce its price per share, or (ii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Subject to Section 13.2, the Administrator shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding award to increase the price per share or to cancel and replace an Award with the grant of an Award having a price per share that is greater than or equal to the price per share of the original Award.

## ARTICLE 12.

### ADMINISTRATION

12.1 Administrator. The Compensation Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under the Plan) shall administer the Plan (except as otherwise permitted herein) and, unless otherwise determined by the Board, shall consist solely of two or more Non-Employee Directors appointed by and holding office at the pleasure of the Board, each of whom is intended to qualify as both a non-employee director as defined by Rule 16b-3 of the Exchange Act or any successor rule, an outside director for purposes of Section 162(m) of the Code and an independent director under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded; provided, that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 12.1 or otherwise provided in any charter of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written or electronic notice to the Board. Vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and (b) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 12.6.

12.2 Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, the Program and the Award Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are not inconsistent therewith, to interpret, amend or revoke any such rules and to amend any Program or Award Agreement provided that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not affected adversely by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 13.10. Any such grant or award under the Plan need not be the same with respect to each Holder. Any such interpretations and rules with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or

any successor rule, or Section 162(m) of the Code, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

12.3 Action by the Committee. Unless otherwise established by the Board or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

12.4 Authority of Administrator. Subject to any specific designation in the Plan, the Administrator has the exclusive power, authority and sole discretion to:

- (a) Designate Eligible Individuals to receive Awards;
- (b) Determine the type or types of Awards to be granted to each Eligible Individual;
- (c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;
- (d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any performance criteria, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;
- (e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (f) Prescribe the form of each Award Agreement, which need not be identical for each Holder;
- (g) Decide all other matters that must be determined in connection with an Award;
- (h) Establish, adopt or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;
- (i) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement; and
- (j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

12.5 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding and conclusive on all parties.

12.6 Delegation of Authority. To the extent permitted by applicable law or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, the Board or Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards or to take other administrative actions pursuant to Article 12; provided, however, that in no event shall an officer of the Company be delegated the authority to grant awards to, or amend awards held by, the following individuals: (a) individuals who are subject to Section 16 of the Exchange Act, (b) Covered Employees or (c) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under Section 162(m) of the Code and applicable securities laws or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegate. At all times, the delegate appointed under this Section 12.6 shall serve in such capacity at the pleasure of the Board and the Committee.

### ARTICLE 13.

#### MISCELLANEOUS PROVISIONS

13.1 Amendment, Suspension or Termination of the Plan. Except as otherwise provided in this Section 13.1, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Administrator, no action of the Administrator may, except as provided in Section 13.2, (i) increase the limits imposed in Section 3.1 on the maximum number of shares which may be issued under the Plan, or (ii) reduce the price per share of any outstanding Option or Stock Appreciation Right granted under the Plan, or (iii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Except as provided in Section 13.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, impair any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides. No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and in no event may any Award be granted under the Plan after the tenth (10<sup>th</sup>) anniversary of the Effective Date.

#### 13.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, Change in Control or any other change affecting the shares of the Company's stock or the share price of the Company's stock other than an Equity Restructuring, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (i) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan, adjustments of the Award Limit, and adjustments of the manner in which shares subject to Full Value Awards will be counted); (ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Awards; (iii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (iv) the grant or exercise price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Performance Based Compensation shall be consistent with the requirements of Section 162(m) of the Code.

(b) In the event of any transaction or event described in Section 13.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations or accounting principles, the

Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 13.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion having an aggregate value not exceeding the amount that could have been attained upon the exercise of such Award or realization of the Holder's rights had such Award been currently exercisable or payable or fully vested;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of shares of the Company's stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 13.2(a) and 13.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted; and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator in its discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan and adjustments of the Award Limit). The adjustments provided under this Section 10.2(c) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company.

(d) Notwithstanding any other provision of the Plan, the Board, in its sole discretion, and on such terms and conditions as it deems appropriate, is authorized to adopt or put into place a change in control program to determine the vesting schedule, exercisability and other terms of outstanding Awards on or after a Change in Control.

(e) The Administrator may, in its sole discretion, include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(f) With respect to Awards which are granted to Covered Employees and are intended to qualify as Performance-Based Compensation, no adjustment or action described in this Section 13.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause such Award to fail to so qualify as Performance-Based Compensation, unless the Administrator determines that the Award should not so qualify.

(g) No adjustment or action described in this Section 13.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan to violate Section 422(b)(1) of the Code. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would result in short-swing profits liability under Section 16 or violate the exemptive conditions of Rule 16b-3 unless the Administrator determines that the Award is not to comply with such exemptive conditions.

(h) The existence of the Plan, the Program, the Award Agreement and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(i) No action shall be taken under this Section 13.2 which shall cause an Award to fail to comply with Section 409A of the Code or the Treasury Regulations thereunder, to the extent applicable to such Award.

(j) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, Change in Control or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Company in its sole discretion may refuse to permit the exercise of any Award during a period of thirty (30) days prior to the consummation of any such transaction.

13.3 Approval of Plan by Stockholders. The Plan will be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. Awards may be granted or awarded prior to such stockholder approval, provided that such Awards shall not be exercisable, shall not vest and the restrictions thereon shall not lapse and no shares of Common Stock shall be issued pursuant thereto prior to the time when the Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve (12) month period, all Awards previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

13.4 No Stockholders Rights. Except as otherwise provided herein, a Holder shall have none of the rights of a stockholder with respect to shares of Common Stock covered by any Award until the Holder becomes the record owner of such shares of Common Stock.

13.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

13.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company or any Affiliate: (a) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Affiliate, or (b) to grant or assume

options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

13.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including but not limited to state, federal and foreign securities law and margin requirements), the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

13.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

13.9 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof.

13.10 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A of the Code, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Administrator determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Administrator may adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

13.11 No Rights to Awards. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly.

13.12 Unfunded Status of Awards. The Plan is intended to be an unfunded plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Affiliate.

13.13 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; *provided* he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

13.14 Relationship to other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Affiliate except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

13.15 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.







