

EXTREME NETWORKS INC  
Form DEF 14A  
October 10, 2013  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**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 §240.14a-12

**EXTREME NETWORKS, INC.**  
(Name of Registrant as Specified In Its Charter)

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

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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

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October 10, 2013

Dear Stockholder:

You are cordially invited to attend the 2013 Annual Meeting of Stockholders of Extreme Networks, Inc. to be held on Wednesday, November 20, 2013 at 10:00 a.m. Pacific Daylight Time at our principal offices located at 145 Rio Robles, San Jose, CA 95134.

Details of business to be conducted at the Annual Meeting are described in the Notice of Annual Meeting of Stockholders and Proxy Statement. At the Annual Meeting, we will present a report on its operations during the past year and respond to questions from stockholders. Accompanying this Proxy Statement is the Company's 2013 Annual Report to Stockholders.

We are pleased to take advantage of Securities and Exchange Commission rules that allow companies to furnish proxy materials to stockholders over the Internet. We believe that these rules allow us to provide our stockholders with the information they need, while lowering the costs of delivery and reducing the environmental impact of the Annual Meeting. On or about October 10, 2013, you were provided with a Notice of Internet Availability of Proxy Materials ( Notice ) and provided access to our proxy materials over the Internet. The Notice also provides instructions on how to vote online or by telephone and includes instructions on how to receive a paper copy of the proxy materials by mail.

We hope that you will attend the Annual Meeting. Whether or not you plan to attend, you can ensure that your shares are represented at the meeting by promptly voting and submitting your proxy by telephone, by Internet or, if you have received a paper copy of your proxy materials by mail, by completing, signing, dating and returning your proxy card in the envelope provided.

If you have any further questions concerning the Annual Meeting or any of the proposals, please contact our Investor Relations department at (408) 579-3030. We look forward to your attendance at the Annual Meeting.

Yours Truly,

Charles W. Berger  
*President and Chief Executive Officer*

**YOUR VOTE IS VERY IMPORTANT. Whether or not you plan to attend the Annual Meeting of Stockholders, we urge you to vote and submit your proxy by telephone, the Internet or by mail in order to ensure the presence of a quorum. If you attend the meeting and do not hold your shares through an account with a brokerage firm, bank or other nominee, you will have the right to revoke the proxy and vote your shares in person. If you hold your shares through an account with a brokerage firm, bank or other nominee, please follow the instructions you receive from them to vote your shares and revoke your vote, if necessary.**

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**Extreme Networks, Inc.**

**145 Rio Robles**

**San Jose, California 95134**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held November 20, 2013**

TO THE STOCKHOLDERS:

Notice is hereby given that the 2013 Annual Meeting of Stockholders of Extreme Networks, Inc. will be held on Wednesday, November 20, 2013 at 10:00 a.m. Pacific Daylight Time at our principal offices located at 145 Rio Robles, San Jose, CA 95134, in order to:

1. Elect seven members of the Board of Directors for a one-year term;
2. Vote on a non-binding advisory resolution to approve executive compensation;
3. Ratify the appointment of our independent auditors for our fiscal year ending June 30, 2014;
4. Approve the adoption of the Extreme Networks, Inc. 2013 Equity Incentive Plan; and
5. Transact such other business as may properly come before the meeting and any adjournment or postponement thereof.

Our board of directors recommends a vote FOR Items 1, 2, 3 and 4. Stockholders of record at the close of business on October 1, 2013 are entitled to notice of, and to vote at, this meeting and any adjournment or postponement thereof. For ten days prior to the meeting, a complete list of stockholders entitled to attend and vote at the meeting will be available for review by any stockholder during normal business hours at our headquarters located at 145 Rio Robles, San Jose, California 95134.

BY ORDER OF THE BOARD OF DIRECTORS,

**Allison Amadia**

*Vice President, General Counsel and Secretary*

San Jose, California

October 10, 2013

**YOUR VOTE IS IMPORTANT:** Please vote your shares via telephone or the Internet, as described in the accompanying materials, to assure that your shares are represented at the meeting, or, if you received a paper copy of the proxy card by mail, you may mark, sign and date the proxy card and return it in the enclosed postage-paid envelope. If you attend the meeting, you may choose to vote in person even if you have previously voted your shares.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON NOVEMBER 20, 2013:** This Proxy Statement and the financial and other information concerning Extreme Networks contained in our Annual Report to Stockholders for the fiscal year ended June 30, 2013 are available on the Internet and may be viewed at [www.proxyvote.com](http://www.proxyvote.com), where you may also cast your vote.

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**EXTREME NETWORKS, INC.**

**PROXY STATEMENT**

**INFORMATION CONCERNING SOLICITATION AND VOTING**

**General**

Our Board of Directors, or our Board, is soliciting your proxy for the 2013 Annual Meeting of Stockholders to be held on Wednesday, November 20, 2013, or at any postponement or adjournment thereof, for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders. This proxy statement and related materials are first being made available to stockholders on or about October 10, 2013. References in this proxy statement to the Company, we, our, us and Extreme Networks are to Extreme Networks, Inc., and references to the Annual Meeting are to the 2013 Annual Meeting of Stockholders. When we refer to the Company's fiscal year, we mean the annual period ending on June 30. This proxy statement covers our 2013 fiscal year, which was from July 1, 2012 through June 30, 2013 (fiscal 2013).

**Who May Vote, Record Date, Admission to Meeting**

Only holders of record of common stock at the close of business on October 1, 2013 will be entitled to notice of and to vote at the meeting and any adjournment thereof. As of the record date, 94,466,267 shares of common stock were outstanding and entitled to vote. You are entitled to one vote for each share you hold.

You are entitled to attend the Annual Meeting if you were a stockholder of record or a beneficial owner of our common stock as of the record date, or you hold a valid legal proxy for the Annual Meeting. If you are a stockholder of record, you may be asked to present valid picture identification, such as a driver's license or passport, for admission to the Annual Meeting.

If your shares are registered in the name of a bank, brokerage firm or other holder of record (your record holder), you may be asked to provide proof of beneficial ownership as of the record date, such as a brokerage account statement or voting instruction form provided by your record holder, or other similar evidence of ownership, as well as picture identification, for admission. If you wish to be able to vote in person at the Annual Meeting, you must obtain a legal proxy from your brokerage firm, bank or other holder of record and present it to the inspector of elections with your ballot at the Annual Meeting.

If you do not provide picture identification and comply with the other procedures outlined above, you may not be admitted to the Annual Meeting. We recommend that you arrive early to ensure that you are seated by the commencement of the Annual Meeting.

**Broker Non-Votes**

A broker non-vote occurs when a broker submits a proxy card with respect to shares held in a fiduciary capacity (typically referred to as being held in street name ) but declines to vote on a particular matter because the broker has not received voting instructions from the beneficial owner. Under the rules that govern brokers who are voting with respect to shares held in street name, brokers have the discretion to vote such shares on routine matters, but not on non-routine matters. Routine matters include the ratification of selection of auditors and approval of pro rata stock splits. Non-routine matters include the election of directors and amendments to or the adoption of stock plans.

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### **Quorum**

Our bylaws provide that a majority of the shares of all of the shares common stock issued and outstanding as of the record date must be represented at the meeting, either in person or by proxy, to constitute a quorum for the transaction of business at the meeting, except to the extent that the presence of a larger number may be required by law. Your shares will be counted towards the quorum only if you submit a valid proxy (or one is submitted on your behalf by your broker or bank) or if you vote in person at the meeting. Abstentions and broker non-votes (shares held by a broker or nominee that does not have the authority, either express or discretionary, to vote on a particular matter) will each be counted as present for purposes of determining the presence of a quorum.

### **Notice and Access Model**

The SEC's proxy rules set forth how companies must provide proxy materials. These rules are often referred to as notice and access. Under the notice and access model, a company may select either of the following options for making proxy materials available to stockholders: (i) the full set delivery option; or (ii) the notice only option. A company may use a single method for all its stockholders, or use full set delivery for some while adopting the notice only option for others. We must comply with these rules in connection with our 2013 Annual Meeting.

Under the full set delivery option a company delivers all proxy materials to its stockholders by mail or, if a stockholder has previously agreed, electronically. In addition to delivering proxy materials to stockholders, the company must post all proxy materials on a publicly-accessible web site (other than the SEC's web site) and provide information to stockholders about how to access that web site and the hosted materials. Under the notice only option, instead of delivering its proxy materials to stockholders, the company instead delivers a Notice of Internet Availability of Proxy Materials which outlines (i) information regarding the date and time of the meeting of stockholders as well as the items to be considered at the meeting; (ii) information regarding the web site where the proxy materials are posted; and (iii) various means by which a stockholder can request paper or email copies of the proxy materials.

In connection with our 2013 Annual Meeting, we have elected to use the notice only option. Accordingly, you should have received a notice by mail instructing you how to access proxy materials at [www.proxyvote.com](http://www.proxyvote.com) and providing you with a control number you can use to vote your shares. You may request that the Company deliver paper copies of the proxy materials as well.

All valid proxies received before the meeting will be exercised. All shares represented by a proxy will be voted, and where a proxy specifies a stockholder's choice with respect to any matter to be acted upon, the shares will be voted in accordance with that specification. If no choice is indicated on the proxy, the shares will be voted in favor of the proposal. A stockholder whose shares are registered in their own name has the power to revoke his or her proxy at any time before it is exercised by delivering to the Secretary of the Company a written instrument revoking the proxy or a duly executed proxy with a later date, or by attending the meeting and voting in person. If you hold shares in street name, through a bank, broker or other nominee, please contact the bank, broker or other nominee to revoke your proxy.

### **Vote Required to Adopt Proposals**

Each share of our common stock outstanding on the record date is entitled to one vote on each of the director nominees and one vote on each other matter. For the election of directors, the director nominees who receive the highest number of For votes will be elected as directors. You may vote For or Withhold with respect to each director nominee. Votes that are withheld will be excluded entirely from the vote with respect to

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the nominee from which they are withheld and will have the same effect as an abstention. All other matters shall be determined by a majority of the votes cast affirmatively or negatively on the matter.

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### **Effect of Abstentions and Broker Non-Votes**

Shares not present at the meeting and shares voted **Withhold** will have no effect on the election of directors. For each of the other proposals, abstentions will have the same effect as a vote against. If you are a beneficial owner and hold your shares in **street name**, it is critical that you cast your vote if you want it to count in the election of directors and the other proposals included in this proxy. Under the rules governing banks and brokers who are voting with respect to shares held in street name, such banks and brokers have the discretion to vote on routine matters, but not on non-routine matters. Routine matters include the ratification of auditors. Non-routine matters include the election of directors, the amendment or adoption of equity incentive plans and the executive compensation advisory proposal. Banks and brokers may not vote on these proposals if you do not provide specific voting instructions. Accordingly, we encourage you to vote promptly, even if you plan to attend the Annual Meeting. In tabulating the voting results for any particular proposal, shares that constitute broker non-votes are not considered entitled to vote on that proposal.

### **Voting Instructions**

If you complete and submit your proxy card or voting instructions, the persons named as proxies will follow your instructions. If you are a stockholder of record and you submit a proxy card or voting instructions but do not direct how to vote on each item, the persons named as proxies will vote as the board recommends on each proposal. Depending on how you hold your shares, you may vote in one of the following ways:

***Stockholders of Record:*** You may vote by proxy or over the Internet or by telephone. Please follow the instructions provided herein or on the proxy card you received, then sign and return it in the prepaid envelope. You may also vote in person at the Annual Meeting.

***Beneficial Stockholders:*** Your bank, broker or other holder of record will provide you with a voting instruction card for you to use to instruct them on how to vote your shares. Check the instructions provided by your bank, broker or other holder of record to see which options are available to you. However, since you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid proxy from your bank, broker or other agent.

Votes submitted by telephone or via the Internet must be received by 11:59 p.m., Eastern Time, on November 19, 2013. Submitting your proxy by telephone or via the Internet will not affect your right to vote in person should you decide to attend the Annual Meeting.

If you are a stockholder of record, you may revoke your proxy and change your vote at any time before the polls close by returning a later-dated proxy card, by voting again by Internet or telephone as more fully detailed on your proxy card, or by delivering written instructions to the Corporate Secretary before the Annual Meeting. Attendance at the Annual Meeting will not in and of itself cause your previously voted proxy to be revoked unless you specifically so request or vote again at the Annual Meeting. If your shares are held by a bank, broker or other agent, you may change your vote by submitting new voting instructions to your bank, broker or other agent, or, if you have obtained a legal proxy from your bank, broker or other agent giving you the right to vote your shares, by attending the Annual Meeting and voting in person.

### **Solicitation of Proxies**

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We will bear the entire cost of soliciting proxies. In addition to soliciting stockholders by mail, we will request banks, brokers and other intermediaries holding shares of our common stock beneficially, owned by others to obtain proxies from the beneficial owners and will reimburse them for their reasonable expenses in so doing. We may use the services of our officers, directors and other employees to solicit proxies, personally or by telephone, without additional compensation.

### **Voting Results**

We will announce preliminary voting results at the Annual Meeting. We will report final results in a Current Report on Form 8-K filed with the SEC within four business days of the Annual Meeting.

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**PROPOSAL ONE:**

**ELECTION OF DIRECTORS**

At our 2010 Annual Meeting, our stockholders approved an amendment to our Restated Certificate of Incorporation, as amended, (the Restated Certificate ) to provide for the declassification of our Board over a three year period and then for annual election of all directors. Prior to the amendment of the Restated Certificate, our Board was divided into three classes Class I, Class II and Class III, with each Class serving a staggered three-year term. Beginning with the Class I directors at the 2011 Annual Meeting, directors elected to succeed those directors whose terms were expiring were elected for a one-year term expiring at the next annual meeting. At this 2013 Annual Meeting, we will have completed our transition to a fully declassified Board and all directors will be elected for a one-year term.

The terms of the current directors expire upon the election and qualification of the directors to be elected at the 2013 Annual Meeting. The Board has nominated seven persons for election at the Annual Meeting to serve until the 2014 Annual Meeting of Stockholders and until their successors are duly elected and qualified. All nominees for election to the Board are presently directors of Extreme Networks. At the recommendation of the Nominating and Corporate Governance Committee, our Board size is being reduced from nine members to seven members in order to enhance efficiency and reduce compensation costs. Our Board's nominees for election at the 2013 Annual Meeting are Charles W. Berger, Maury Austin, Charles Carinalli, Edward H. Kennedy, John H. Kispert, Edward B. Meyercord, III and John C. Shoemaker. Harry Silverglide and Edward Terino have notified the Company of their intention not to stand for re-election at the 2013 Annual Meeting. Extreme Networks extends its sincere appreciation to Messrs. Silverglide and Terino for their valuable contributions during their service as members of our Board of Directors.

In connection with the decrease in the number of nominees to the Board, in accordance with our bylaws, the Board acted by resolution to decrease its size from nine to seven members upon the election and qualification of the directors to be elected at the 2013 Annual Meeting.

Please see below under the heading *Board of Directors* for information concerning each nominee. If elected, each of the nominees will serve as directors until the Annual Meeting of stockholders in 2014 and until their successors are elected and qualified or until their earlier resignation or removal.

Each nominee has indicated to us that he will serve if elected. If a nominee declines to serve or becomes unavailable for any reason, or if a vacancy otherwise occurs before the election, although management knows of no reason that this will occur, the proxies may be voted for a substitute nominee as the Nominating and Corporate Governance Committee or our Board may designate.

**Vote Required and Board of Directors Recommendation**

The persons receiving the highest number of votes represented by outstanding shares of common stock present or represented by proxy and entitled to vote at the 2013 Annual Meeting will be elected, assuming a quorum is present. Votes For , votes to Withhold authority and Broker Non-Votes will each be counted as present for purposes of determining the presence of a quorum, but broker non-votes will have no effect on the outcome of the election. If you sign and return a proxy card without giving specific voting instructions as to the election of any director, your shares will be voted in favor of the nominees recommended by our Board.

**OUR BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE NOMINEES NAMED ABOVE.**



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The following table provides biographical information for each nominee to our Board of Directors.

| <b>Name</b>   | <b>Age</b> | <b>Director Since</b> |
|---|------------|-----------------------|
| <b>Charles W. Berger</b> , <i>Director, President and Chief Executive Officer</i> | 59         | 2013                  |
| <b>Edward B. Meyercord, III</b> , <i>Chairman of the Board of Directors</i>       | 48         | 2009                  |
| <b>Maury Austin</b> , <i>Director</i>   | 55         | 2012                  |
| <b>Charles Carinalli</b> , <i>Director</i>  | 65         | 1996                  |
| <b>Edward H. Kennedy</b> , <i>Director</i>  | 59         | 2011                  |
| <b>John H. Kispert</b> , <i>Director</i>  | 50         | 2009                  |
| <b>John C. Shoemaker</b> , <i>Director</i>  | 71         | 2007                  |

There are no family relationships among any of our directors or executive officers.

The biographies of each of our continuing directors below contains information regarding the person's service as a director, if applicable, business experience, other director positions held currently or at any time during the last five years, information regarding involvement in certain legal or administrative proceedings, if applicable, and the experiences, qualifications, attributes or skills that caused the Nominating and Corporate Governance Committee and our Board to determine that the person should serve as a director.

**Nominees for Election at 2013 Annual Meeting**

*Charles W. Berger.* Mr. Berger has served as our President and Chief Executive Officer since April 2013. Mr. Berger served previously as Chairman, President and Chief Executive Officer of ParAccel, Inc. from August 2010 until its sale to Actian Corporation in April 2013. From June 2010 through August 2010, Mr. Berger served as the Interim Chief Executive Officer of Official Payments Holdings, Inc., a publicly traded electronic payment processing firm, for which he has served as a Director since 2002. From April 2006 through December 2009, Mr. Berger served as Chief Executive Officer, and from December 2001, the Chairman, of DVDPlay, Inc. prior to its acquisition by NCR Corporation. Mr. Berger served as President, Chief Executive Officer, and as a director of Nuance Communications, Inc. from March 2003 until September 2005 when it merged with Scansoft, Inc. Mr. Berger also serves on the board of directors and as a trustee for the United States Naval Memorial, is a trustee and member of the investment committee for Bucknell University and is a trustee for Presentation High School in San Jose, CA. Mr. Berger received his B.S. in Business Administration from Bucknell University and his M.B.A., cum laude, from Santa Clara University.

Mr. Berger has extensive executive experience in the communications technology industry and provides strong financial and operational expertise to our Board. As our current President and Chief Executive Officer, Mr. Berger also provides our Board with important insights about the Company and its operations.

*Edward B. Meyercord, III.* Mr. Meyercord has served as the Chairman of our Board of Directors since March, 2011, and as one of directors since October 2009. Mr. Meyercord currently serves as Chief Executive Officer and director of Critical Alert Systems LLC, a private company that provides healthcare communications technology solutions, where he has served since July 2010. He previously was the founder and President of Council Rock Advisors LLC, a financial advisory company. From December 2006 until January 2009, Mr. Meyercord served as

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Chief Executive Officer of Cavalier Telephone & TV, a privately held voice and data services company. Mr. Meyercord served as Chief Executive Officer and a member of the board of directors of Talk America, Inc., a publicly traded provider of phone and internet services to consumers and small businesses, until its sale to Cavalier Telephone & TV in December 2006. Mr. Meyercord also served on the board of directors of Tollgrade Communications, Inc., a supplier of telecommunications network service assurance and smartgrid products and solutions owned by Golden Gate Capital. Mr. Meyercord received his B.A. in economics from Trinity College in Hartford, CT and his M.B.A. from New York University.

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Mr. Meyercord has extensive executive experience in corporate finance, risk assessment and management. His background in the telecommunications industry provides our Board with valuable industry expertise in one of our key markets.

*Maury Austin.* Mr. Austin has served as one of our directors since April 2012. Mr. Austin currently serves as a strategic advisor for technology-oriented businesses. From March 2008 to December 2011, Mr. Austin served as Chief Financial Officer of MIPS Technologies, Inc., a publicly traded provider of processor architectures and cores for digital home, networking and mobile applications. He previously served as Chief Financial Officer for technology companies including Portal Software, Vicinity, Symmetricom, Southwall Technologies and Flashpoint. Mr. Austin also held executive management positions with Apple Computer, Inc., having served as Vice President and General Manager of its Imaging Business. Mr. Austin holds a B.S. in Business Administration (Finance & Marketing) from the University of California, Berkeley and an M.B.A. from Santa Clara University.

Mr. Austin, who has more than 30 years of corporate finance experience in senior executive positions at established technology companies, will provide our Board with financial expertise and effective insight into our company and its business.

*Charles Carinalli.* Mr. Carinalli has served as one of our directors since October 1996. Mr. Carinalli has been a Principal of Carinalli Ventures since January 2002. From 1999 to May 2002, Mr. Carinalli was Chief Executive Officer and a director of Adaptive Silicon, Inc., a private developer of semiconductors. From November 2000 to November 2001, Mr. Carinalli served as Chairman of Clearwater Communications, Inc., a privately held telecommunications company. From December 1996 to July 1999, Mr. Carinalli served as President, Chief Executive Officer and a director of Wavespan, Inc., a privately held developer of wireless broadband access systems that was acquired by Proxim, Inc. From 1970 to 1996, Mr. Carinalli served in various positions for National Semiconductor Corporation, developing analog-based semiconductor and integrated communication products, most recently as Senior Vice President and Chief Technical Officer. Mr. Carinalli also serves on the boards of directors of Fairchild Semiconductor, a publicly traded semiconductor company, Atmel Corporation, a publicly traded semiconductor company and several privately held companies. Mr. Carinalli holds a B.S. in electrical engineering from the University of California, Berkeley and a M.S. in electrical engineering from Santa Clara University.

Mr. Carinalli provides our Board with extensive engineering and engineering management expertise, as well as management expertise and technology expertise, which aids our Board in understanding product development, engineering management and strategic planning, as well as risk assessment and planning.

*Edward H. Kennedy.* Mr. Kennedy has served as one of our directors since April 2011. Currently, Mr. Kennedy is the Chairman, Chief Executive Officer and President of Tollgrade Communications, Inc. Mr. Kennedy previously served as the Chief Executive Officer and President of Rivulet Communications, Inc., a medical video networking company. He also previously served as President of Tellabs North American Operations and Executive Vice President of Tellabs, and co-founded Ocular Networks, a provider of optical networking technologies, until it was sold to Tellabs. He has also held various executive positions at several telecommunications equipment companies, including Alcatel and Newbridge Networks Corporation. Mr. Kennedy was also a Venture Partner at Columbia Capital, a private equity investment firm, where he advised investments into new and existing portfolio companies. Mr. Kennedy holds a B.S. in electrical engineering from the Virginia Polytechnic Institute.

Mr. Kennedy has extensive financial and executive leadership experience in technology companies, including networking companies, and provides management and financial expertise to our Board.

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*John H. Kispert.* Mr. Kispert has served as one of our directors since May 2009. Mr. Kispert has served as President and Chief Executive Officer of Spansion, Inc., a publicly-traded manufacturer of flash memory

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products, since February 2009 and on its board of directors since May 2010. From 1995 to January 2009, Mr. Kispert held various executive management positions at KLA-Tencor Corporation, a privately held semiconductor equipment company, including President and Chief Operating Officer, Executive Vice President and Chief Financial Officer and Vice President, Finance and Accounting. Prior to KLA-Tencor, Mr. Kispert served in a number of positions with the IBM Corporation. Mr. Kispert received his B.S. in political science from Grinnell College and his M.B.A. from the University of California, Los Angeles.

Mr. Kispert has extensive management and leadership experience and provides our Board with technology, leadership and financial expertise that aids our Board in understanding corporate needs and strategic opportunities.

*John C. Shoemaker.* Mr. Shoemaker has served as one of our directors since October 2007. From 1990 to June 2004, Mr. Shoemaker held various executive management positions at Sun Microsystems, Inc., a publicly held computer company, including as Executive Vice President, Worldwide Operations Organizations and Executive Vice President and General Manager for its Computer Systems Division. Mr. Shoemaker previously served in a number of senior executive positions with the Xerox Corporation, a provider of document management technology and services, including as Senior Vice President, World Wide Marketing. Mr. Shoemaker is a director of Altera Corporation, a publicly traded provider of programmable logic solutions, and several privately held companies. Mr. Shoemaker holds a B.A. from Hanover College, where he is currently on the Board of Trustees, and a M.B.A. from Indiana University's Kelley School of Business, where he is a member of the School of Business Dean's Advisory Council, the IT Advisory Council, and the Johnson Center for Entrepreneurship Board.

Mr. Shoemaker has extensive executive experience in senior level management positions in the technology industry, particularly in hardware systems, and provides strong operational, management and financial expertise to our Board.

## **Arrangements Regarding Appointment of Directors**

Charles W. Berger, our President and Chief Executive Officer, was appointed to our Board in connection with an offer letter of employment we entered into with him in April 2013. Pursuant to the offer letter, Mr. Berger must immediately resign as a member of our Board upon the date his employment with the Company terminates.

In October 2010 we entered into an agreement with several entities and persons associated with Ramius Advisors, now Starboard Value LP. Under this agreement, we increased the size of our Board to nine directors, creating a Class III vacancy, and we agreed to a process for the appointment of a person to fill the vacant position. Once elected, we agreed to appoint such director to certain committees of our Board. In April 2011, we appointed Mr. Kennedy to fill the vacancy and to our Audit Committee. As our Board is completing its declassification process concurrent with this 2013 Annual Meeting, the agreement will lapse.

## **CORPORATE GOVERNANCE**

Our Board currently consists of nine directors, decreasing to seven at the 2013 Annual Meeting. As of the 2013 Annual Meeting, we have completed the process of declassifying our Board over a three year period, beginning with our 2011 Annual Meeting. Our Board was previously divided into three classes – Class I, Class II and Class III, with each class consisting of a minimum of two directors and each class serving staggered three-year terms.

Our Board has determined that, other than Charles W. Berger, each member of our Board is an independent director for purposes of the NASDAQ Marketplace Rules. In making these independence determinations, our

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Board has concluded that these directors do not have an employment, business, family or other relationship which, in the opinion of our Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Directors to be elected at the 2013 Annual Meeting are to hold office until the next Annual Meeting and until their respective successors are elected and qualified. Our Board has a mandatory retirement age of seventy-five (75).

## **Board and Leadership Structure**

Our leadership structure currently consists of an Independent Chairman and a Chief Executive Officer. In the current structure, the roles of Chief Executive Officer and Chairman of our Board are separated. Edward B. Meyercord, III has served as the Independent Chairman of our Board since March 2011, while Charles W. Berger serves as our President and Chief Executive Officer. Separating these positions allows our Chief Executive Officer to focus on setting our strategic direction and for day-to-day leadership and performance, while allowing the Chairman of our Board to lead our Board in its fundamental role of providing advice to, and independent oversight of, management.

Our Board recognizes the time, effort, and energy that our Chief Executive Officer is required to devote to his position in the current business environment, as well as the commitments required to serve as the Chairman of our Board, particularly as our Board's oversight responsibilities continue to grow. While our bylaws and Corporate Governance Guidelines do not require that the Chairman of our Board and Chief Executive Officer positions be separate, our Board believes that separating these positions is the appropriate leadership structure for us at this time and results in an effective balancing of responsibilities, experience and independent perspective to meet the current corporate governance needs and oversight responsibilities of our Board.

Mr. Meyercord's duties as Independent Chairman include:

chairing executive sessions of the independent directors;

ensuring that independent directors have adequate opportunities to meet without management present;

serving as designated contact for communication to independent directors, including being available for consultation and direct communication with major stockholders;

ensuring that the independent directors have an opportunity to provide input on the agenda for meetings of our Board;

assuring that there is sufficient time for discussion of all agenda items; and

being identified as the recipient of communications with stockholders in the annual meeting proxy statement.

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Our Board elects our President, Chief Financial Officer, Secretary and all executive officers. All executive officers serve at the discretion of our Board. Each of our officers devotes his or her full time to our affairs. Our directors devote time to our affairs as is necessary to discharge their duties. In addition, our Board has the authority to retain its own advisers to assist it in the discharge of its duties. There are no family relationships among any of our directors, officers or key employees.

### **Board's Role in Risk Oversight**

Our Board has an active role, as a whole and also at the committee level, in overseeing management of the risks we face. This role is one of informed oversight rather than direct management of risk. Our Board regularly reviews and consults with management on strategic direction, challenges and risks we face. Our Board also reviews and discusses with management quarterly financial results and forecasts. The Audit Committee of our



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Board oversees management of financial risks, and its charter tasks the committee to provide oversight of and review at least annually our risk management policies, including its investment policies and anti-fraud program. The Compensation Committee of our Board is responsible for overseeing the management of risks relating to and arising from our executive compensation plans and arrangements. These committees provide regular reports, generally on a quarterly basis, to the full Board.

Management is tasked with the direct management and oversight of legal, financial, and commercial compliance matters, which includes identification and mitigation of associated areas of risk. Our General Counsel provides regular reports of legal risks to the Audit Committee and our Board. Our Chief Financial Officer and the Corporate Controller provide regular reports to the Audit Committee concerning financial, tax and audit related risks. In addition, the Audit Committee receives periodic reports from management on our compliance programs and efforts, investment policy and practices and the results of various internal audit projects. Management and the Compensation Committee's compensation consultant provide analysis of risks related to our compensation programs and practices to the Compensation Committee.

**Meetings of the Board of Directors**

Our Board held eleven meetings during the fiscal year ended June 30, 2013. No director serving on our Board in fiscal year 2013 attended fewer than 75% of the aggregate of the meetings of our Board and the meetings of the committees on which he served.

**Executive Sessions**

The independent members of our Board meet regularly in executive session (without the participation of executive officers or other non-independent directors), generally before or after a regularly scheduled Board meetings or at such other times requested by our independent directors. Executive sessions of the independent directors are chaired by our Chairman. The executive sessions include discussions and recommendations regarding guidance to be provided to the Chief Executive Officer and such topics as the independent directors determine.

**Committees of the Board of Directors**

Our Board has a separately-designated standing Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee and Strategy Committee. Our Board has adopted a written charter for each of these committees, each of which is available on our website at <http://www.extremenetworks.com/about-extreme/corp-governance.aspx>.

*Fiscal 2013 Committee Membership*

| Name              | Audit<br>Committee | Compensation<br>Committee | Nominating and<br>Corporate Governance<br>Committee | Strategy<br>Committee |
|-------------------|--------------------|---------------------------|---|-----------------------|
| Maury Austin      | <i>Member</i>      | <i>Member</i>             |   |                       |
| Charles Carinalli |                    | <i>Chairman</i>           | <i>Member</i>                                       |                       |

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|                                 |                             |               |                             |                 |
|---------------------------------|-----------------------------|---------------|-----------------------------|-----------------|
| <b>John H. Kispert</b>          | <i>Chairman</i>             |               |                             | <i>Member</i>   |
| <b>Edward H. Kennedy</b>        | <i>Member</i>               |               |                             | <i>Member</i>   |
| <b>Edward B. Meyercord, III</b> |                             | <i>Member</i> | <i>Member</i>               | <i>Chairman</i> |
| <b>John C. Shoemaker</b>        |                             | <i>Member</i> | <i>Chairman</i>             |                 |
| <b>Harry Silverglide</b>        |                             |               | <i>Member<sup>(1)</sup></i> |                 |
| <b>Edward Terino</b>            | <i>Member<sup>(1)</sup></i> |               |                             |                 |

(1) Will serve as a member until the 2013 Annual Meeting of Stockholders.

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*Audit Committee.* The current members of the Audit Committee are Messrs. Kispert, Austin, Kennedy and Terino. Mr. Kispert serves as Chairman. Mr. Terino will serve through the date of the 2013 Annual Meeting. Each member of the Audit Committee has been determined by our Board to be independent for purposes of the NASDAQ Marketplace Rules and the rules of the SEC as these rules apply to audit committee members. Our Board has determined that Mr. Kispert is an audit committee financial expert, as defined in the rules of the SEC. The Audit Committee retains our independent auditors, reviews and approves the planned scope, proposed fee arrangements and terms of engagement of the independent auditors, reviews the results of the annual audit of our financial statements and the interim reviews of our unaudited financial statements, evaluates the adequacy of accounting and financial controls, reviews the independence of our auditors, and oversees our financial reporting on behalf of our Board. The Audit Committee is also responsible for establishing procedures for the receipt, retention and treatment of complaints received by us regarding questionable accounting or auditing matters, including the anonymous submission by our employees of concerns regarding accounting or auditing matters. In addition, the Audit Committee reviews with our independent auditors the scope and timing of their audit services and any other services they are asked to perform, the independent auditor's report on our consolidated financial statements following completion of their audit, and our critical accounting policies and procedures and policies with respect to our internal accounting and financial controls. The Audit Committee also assists our Board in fulfilling its oversight responsibilities with respect to financial risks, including risk management in the areas of financial reporting, internal controls, and compliance with legal and regulatory requirements. The Audit Committee held nine meetings during the fiscal year ended June 30, 2013.

*Compensation Committee.* The current members of the Compensation Committee are Messrs. Carinalli, Austin, Meyercord and Shoemaker. Mr. Carinalli serves as Chairman. Each member of the Compensation Committee has been determined by our Board to be independent for purposes of the NASDAQ Marketplace Rules as they apply to compensation committee members. The Compensation Committee has responsibility for, among other things, discharging our Board's responsibilities relating to compensation and benefits of our officers, including responsibility for evaluating and reporting to our Board on matters concerning management performance, officer compensation and benefits plans and programs. In carrying out these responsibilities, the Compensation Committee is required to review all components of executive officer compensation for consistency with our compensation philosophy. The Compensation Committee also administers our stock option plans and stock incentive plans. The Compensation Committee assists our Board in fulfilling its oversight responsibilities with respect to the management of risks arising from our compensation policies and programs. The charter of the Compensation Committee provides that the Compensation Committee may delegate duties or responsibilities to subcommittees or to one member of the Compensation Committee from time to time, as appropriate. However, historically the Compensation Committee has delegated duties or responsibilities only under limited circumstances. Our President and Chief Executive Officer and our Vice President of Talent and Culture assist the Compensation Committee in its deliberations with respect to the compensation of our executive officers, except that our Chief Executive Officer does not play a role in the Compensation Committee's deliberations regarding his own compensation determination, other than discussing his performance objectives with the Compensation Committee. The other executive officers do not play a role in the Compensation Committee's deliberations regarding their own compensation determination, except that each executive officer discusses his or her individual performance objectives with our Chief Executive Officer, and our General Counsel may be present for deliberations and may provide advice to the Compensation Committee regarding legal issues associated with compensation plans and decisions. The Compensation Committee held eighteen meetings during the fiscal year ended June 30, 2013. For more information about the Compensation Committee, see the discussion below under the heading Executive Compensation.

*Nominating and Corporate Governance Committee.* The current members of the Nominating and Corporate Governance Committee are Messrs. Shoemaker, Carinalli, Meyercord and Silverglide. Mr. Shoemaker serves as Chairman. Mr. Silverglide will serve through the date of the 2013 Annual Meeting. Each member of the Nominating and Corporate Governance Committee has been determined by our Board to be independent for purposes of the NASDAQ Marketplace Rules as they apply to nominating committee members. The Nominating and Corporate Governance Committee identifies, reviews, evaluates and nominates candidates to serve on our

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Board, is responsible for recommending corporate governance principles, codes of conduct and compliance mechanisms applicable to us, and assists our Board in its annual reviews of the performance of our Board, each committee and management. The Nominating and Corporate Governance Committee assists our Board in fulfilling its oversight responsibilities with respect to the management of risks associated with board organization, membership and structure, succession planning for our directors and executive officers, and corporate governance. The Nominating and Corporate Governance Committee held seven meetings during the fiscal year ended June 30, 2013.

*Strategy Committee.* The current members of the Strategy Committee are Messrs. Meyercord, Kennedy and Kispert. Mr. Meyercord serves as Chairman. Each member of the Strategy Committee has been determined by our Board to be independent for purposes of the NASDAQ Marketplace Rules. The Strategy Committee advises and assists the Board in carrying out the development, articulation, and execution of the Company's long-term strategic plan, including oversight and responsibilities relating to potential mergers, acquisitions, divestitures, combinations and other key strategic transactions outside the ordinary course of the Company's business. The Strategy Committee held four meetings during the fiscal year ended June 30, 2013.

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

Each of Charles Carinalli, Maury Austin, Edward B. Meyercord, III and John C. Shoemaker served as a member of the Compensation Committee in fiscal 2013. None of our executive officers has served on the board of directors or compensation committee of any other entity that has, or has had, one or more executive officers who served as a member of our Board or Compensation Committee during the 2013 fiscal year. No member of the Compensation Committee was, during fiscal year 2013 or any prior period, an officer or employee of the Company.

## **Director Nominations**

*Director Qualifications.* In fulfilling its responsibilities, the Nominating and Corporate Governance Committee considers numerous factors in reviewing possible candidates for nomination as director, including:

the appropriate size of our Board and its committees;

the perceived needs of our Board for particular skills, industry expertise, background and business experience;

the skills, background, reputation, and business experience of nominees and the skills, background, reputation, and business experience already possessed by other members of our Board;

the nominees' independence from management;

the nominees' experience with accounting rules and practices;

the nominees' background with regard to executive compensation;

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the applicable regulatory and listing requirements, including independence requirements and legal considerations, such as antitrust compliance;

the benefits of a constructive working relationship among directors; and

the desire to balance the considerable benefit of continuity with the periodic injection of the fresh perspective provided by new members.

While we do not have a formal diversity policy, in evaluating the qualifications of the candidates, the Nominating and Corporate Governance Committee considers many factors, including issues of character, judgment, independence, age, education, expertise, diversity of experience, length of service, other commitments and ability to serve on committees of our Board, as well as other individual qualities and attributes that contribute

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to board heterogeneity, including characteristics such as race, gender, and national origin. The Nominating and Corporate Governance Committee evaluates such factors, among others, and does not assign any particular weighting or priority to any of these factors.

Other than the foregoing there are no stated minimum criteria for director nominees, although the Nominating and Corporate Governance Committee may also consider other factors as it may deem, from time to time, are in the best interests of us and our stockholders. The Nominating and Corporate Governance Committee believes that it is preferable that at least one member of our Board should meet the criteria for an audit committee financial expert as defined by SEC rules. Under applicable listing requirements, at least a majority of the members of our Board must meet the definition of independent director. The Nominating and Corporate Governance Committee also believes it appropriate for one or more key members of management to participate as members of our Board.

*Identifying and Evaluating Candidates for Nomination as Director.* The Nominating and Corporate Governance Committee annually evaluates the current members of our Board whose terms are expiring and who are willing to continue in service against the criteria set forth above in determining whether to recommend these directors for election. The Nominating and Corporate Governance Committee regularly assesses the optimum size of our Board and its committees and the needs of our Board for various skills, background and business experience in determining if our Board requires additional candidates for nomination.

Candidates for nomination as director come to the attention of the Nominating and Corporate Governance Committee from time to time through incumbent directors, management, stockholders or third parties. These candidates may be considered at meetings of the Nominating and Corporate Governance Committee at any point during the year. Candidates are evaluated against the criteria set forth above. If the Nominating and Corporate Governance Committee believes at any time that our Board requires additional candidates for nomination, the Nominating and Corporate Governance Committee may poll directors and management for suggestions or conduct research to identify possible candidates and may engage, if the Nominating and Corporate Governance Committee believes it is appropriate, a third party search firm to assist in identifying qualified candidates.

The Nominating and Corporate Governance Committee evaluates any recommendation for director nominee proposed by a stockholder. In order to be evaluated in connection with the Nominating and Corporate Governance Committee's established procedures for evaluating potential director nominees, any recommendation for director nominee submitted by a stockholder must be sent in writing to the Corporate Secretary, 145 Rio Robles, San Jose, California 95134 and must be received at our principal executive offices not less than 120 days nor more than 150 calendar days in advance of the date that our proxy statement was released to stockholders in connection with the previous year's Annual Meeting of stockholders, except that if no Annual Meeting was held in the previous year or the date of the Annual Meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, notice by the stockholders to be timely must be received not later than the close of business on the tenth day following the day on which public announcement of the date of such meeting is first made. For purposes of the foregoing, public announcement shall mean disclosure in a broadly disseminated press release or in a document publicly filed by us with the SEC. The recommendation for director nominee submitted by a stockholder must contain the information required by our bylaws. You may contact our Corporate Secretary at our principal executive offices for a copy of the relevant bylaw provisions regarding the requirements for making stockholder proposals and nominating director candidates.

All directors and director nominees must submit a completed director agreement and directors' and officers' questionnaire as part of the nominating process. The evaluation process may also include interviews and additional background and reference checks for non-incumbent nominees, at the discretion of the Nominating and Corporate Governance Committee. In addition, nominees must enter into an agreement to abide by the Company's Code of Conduct and disclose any voting arrangements or compensation provided by third parties in connection with their service on the Company's Board.

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The Nominating and Corporate Governance Committee evaluates incumbent directors, as well as candidates for director nominee submitted by directors, management and stockholders consistently using the criteria stated in our policies and procedures and selects the nominees that, in the Nominating and Corporate Governance Committee's judgment, best suit the needs of our Board at the time.

## **Communications with Directors**

Edward B. Meyercord, III has been selected by our directors as our Independent Chairman and, as such, is responsible for receiving, distributing and arranging responses to communications from our stockholders to our Board. Stockholders may communicate with our Board by transmitting correspondence by mail, facsimile or email, addressed as follows:

Chairman of the Board (or individually named director(s))

Extreme Networks, Inc.

145 Rio Robles

San Jose, California 95134

The Chairman transmits each communication as soon as practicable to the identified director addressee(s), unless (i) there are safety or security concerns that mitigate against further transmission of the communication; or (ii) the communication contains commercial matters not related to the stockholder's stock ownership, as determined by the Chairman in consultation with legal counsel. Our Board or individual directors are advised of any communication withheld for safety, security or other reasons as soon as practicable.

## **Director Attendance at Annual Meetings**

We use reasonable efforts to schedule our Annual Meeting of stockholders at a time and date to maximize attendance by directors, taking into account the directors' schedules. In cases where management, in its reasonable business judgment, expects stockholder attendance at our Annual Meeting to be significant, we encourage director attendance at the Annual Meeting. Directors make every effort to attend our Annual Meeting of stockholders when meaningful stockholder attendance at the meeting is anticipated. Of our current directors, Messrs. Austin, Carinalli, Kennedy, Kispert, Meyercord, Shoemaker, Silverglide and Terino (as nominee) attended our 2012 Annual Meeting of stockholders.

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

Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, requires our executive officers, directors and persons who beneficially own more than 10% of our common stock to file initial reports of beneficial ownership and reports of changes in beneficial ownership with the SEC. These persons are required by SEC regulations to furnish us with copies of all Section 16(a) forms filed by such person. Based solely on our review of the forms furnished to us and written representations from certain reporting persons, we believe that all filing requirements applicable to our executive officers, directors and persons who beneficially own more than 10% of our common stock were complied with in the fiscal year ended June 30, 2013, other than one late filing for David Ginsburg.

**Code of Ethics and Corporate Governance Materials**

Our Board has adopted a charter for its Audit, Compensation and Nominating and Corporate Governance Committees, each of which is available on our website at <http://www.extremenetworks.com/about-extreme/corp-governance.aspx>. Our Board has also adopted a Code of Business Conduct and Ethics that applies to all of our employees, officers and directors. The Code of Business Conduct and Ethics can be found on our website at

<http://www.extremenetworks.com/about-extreme/corp-governance.aspx>.



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We believe that good corporate governance is essential to ensure that we are managed for the benefit of stockholders. Our Board has adopted our Corporate Governance Guidelines to address key corporate governance issues. The Nominating and Corporate Governance Committee is responsible for reviewing the Corporate Governance Guidelines and recommending to our Board any changes to them. The Corporate Governance Guidelines can be found on our website at <http://www.extremenetworks.com/about-extreme/corp-governance.aspx>.

**DIRECTOR COMPENSATION**

During our fiscal year ended June 30, 2013, the compensation policies for service on our Board and its committees were revised following consultation with Compensia, Inc., the independent compensation consultant to the Compensation Committee. Effective starting at the 2012 Annual Meeting, the compensation paid to our directors was, as follows:

*Cash Compensation*

Each non-employee director receives (a) \$40,000 in cash compensation annually for service in this position and (b) the applicable compensation set forth below for serving as a chair or as a member of one or more of the committees of our Board. For service on any special committee that may be formed by our Board from time to time, our Board determines compensation on a case-by-case basis upon a recommendation from the Compensation Committee based on the anticipated amount of time and work related to service on the special committee and other factors as the Compensation Committee may consider. Each director receives reimbursement of expenses related to attendance of meetings of our Board and its committees.

**Annual Committee Member Compensation**

|                                     |           |
|-------------------------------------|-----------|
| Audit Committee                     | \$ 10,000 |
| Compensation Committee              | 10,000    |
| Nominating and Governance Committee | 5,000     |
| Strategy Committee                  | 5,000     |

**Annual Retainers for Chairman or Committee Chair**

|   |           |
|---|-----------|
| Audit Committee Chair                               | \$ 20,000 |
| Compensation Committee Chair                        | 15,000    |
| Nominating and Corporate Governance Committee Chair | 10,000    |
| Strategy Committee Chair                            | 10,000    |
| Board Chairman                                      | 40,000    |

*Equity Compensation*

Effective beginning with the 2012 Annual Meeting, on the date of each Annual Meeting of our stockholders, each non-employee director is awarded an annual grant with a fixed value \$95,000, determined by dividing such amount by the price of the Company's common stock at the close of business on the NASDAQ Global Market on the date of the Company's Annual Meeting of stockholders, rounded down to the nearest whole share. Such annual equity grants shall vest upon the earlier of the first anniversary of the date of grant or the date of next Annual Meeting of stockholders of the Company. Any non-employee director joining the Board during the fiscal year shall receive an equity award pro-rated for such new director's period of service in that year.

Following the 2012 Annual Meeting of stockholders, each non-employee director received a grant of 26,536 shares of our restricted stock.

In July 2001, our Board ratified and approved a policy regarding the acceleration of vesting of shares subject to equity awards granted to directors upon a change-in-control. Under the policy, in the event of a change in

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control that occurs prior to a director's termination of service with us, the shares subject to equity awards vest fully. The policy defines a change-in-control as a single or series of sales or exchanges of voting stock, a merger or consolidation, the sale, or transfer of all or substantially all of the assets, or a liquidation wherein the stockholders immediately before the change-in-control do not retain, immediately after the change-in-control, more than 50% of the total combined voting power of us or the corporation to which the assets were transferred. This policy applies to all equity awards granted to directors after July 2001.

*2013 Director Compensation*

The compensation information for our non-employee directors during the fiscal year ended June 30, 2013 is set forth below:

|                          | <b>Director<br/>Fees<br/>Earned<br/>or Paid<br/>in Cash<br/>(\$)</b> | <b>Stock<br/>Awards<br/>(\$)<sup>(1)</sup></b> | <b>Option<br/>Awards<br/>(\$)<sup>(1)</sup></b> | <b>Total (\$)</b> |
|--------------------------|--|--|---|-------------------|
| Maury Austin             | 60,000 <sup>(2)</sup>  | 94,999   |   | 154,999           |
| Charles Carinalli        | 64,166 <sup>(3)</sup>  | 94,999   |   | 159,165           |
| Edward H. Kennedy        | 57,083 <sup>(4)</sup>  | 94,999   |   | 152,082           |
| John H. Kispert          | 67,083 <sup>(5)</sup>  | 94,999   |   | 162,082           |
| Edward B. Meyercord, III | 101,250 <sup>(6)</sup>   | 94,999   |   | 196,249           |
| John C. Shoemaker        | 65,000 <sup>(7)</sup>  | 94,999   |   | 159,999           |
| Harry Silverglide        | 47,083 <sup>(8)</sup>  | 94,999   |   | 142,082           |
| Edward Terino            | 39,166 <sup>(9)</sup>  | 124,497  | 48,592  | 212,255           |

- (1) Represents the aggregate grant date fair value computed in accordance with ASC Topic 718 and does not reflect whether the director has actually realized a financial benefit from the award. For information on the assumptions used to calculate the value of the awards, refer to Note 5 to our consolidated financial statements in our Form 10-K for the fiscal year ended June 30, 2013. In accordance with SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.
- (2) Consists of \$40,000 for annual retainer, \$14,167 for service on the Audit Committee and \$5,833 for service on the Compensation Committee.
- (3) Consists of \$40,000 for annual retainer, \$17,083 for service as the Chairman of the Compensation Committee and \$7,083 for service on the Nominating and Corporate Governance Committee.
- (4) Consists of \$40,000 for annual retainer, \$14,167 for service on the Audit Committee and \$2,916 for service on the Strategy Committee.
- (5) Consists of \$40,000 for annual retainer, \$24,167 for service as the Chairman of the Audit Committee and \$2,916 for service on the Strategy Committee.
- (6) Consists of \$75,833 for annual retainer for service as the Chairman of the Board, \$10,000 for service on the Compensation Committee, \$9,583 for service on the Nominating and Corporate Governance Committee and \$5,833 for service as the Chairman of the Strategy Committee.
- (7) Consists of \$40,000 for annual retainer, \$10,000 for service on the Compensation Committee, \$5,000 for service as the Chairman of the Nominating and Corporate Governance Committee starting with the 2012 Annual Meeting and \$10,000 for service on the Audit Committee through the 2012 Annual Meeting.
- (8) Consists of \$40,000 for annual retainer, \$7,083 for service on the Nominating and Corporate Governance Committee.
- (9) Consists of \$30,000 for annual retainer and \$9,166 for service on the Audit Committee. Mr. Terino was appointed to our board in October 2012.

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**PROPOSAL TWO:**

**ADVISORY VOTE ON EXECUTIVE COMPENSATION**

**Background**

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, our stockholders are entitled to vote to approve, on an advisory non-binding basis, the compensation of our named executive officers as disclosed in this proxy statement in accordance with SEC rules. This vote is not intended to address any specific item of compensation, but rather the overall compensation of the Company's named executive officers and the philosophy, policies and practices described in this proxy statement.

As described in further detail under the heading *Executive Compensation and Other Matters Compensation Discussion and Analysis*, our executive compensation philosophy is designed to attract high quality candidates for senior leadership positions, to retain these employees and to establish a total compensation program which, motivates and rewards individual and team performance in a highly competitive industry. Our compensation programs are designed to align our executive officers' performance with our goals, principal among which is the creation of stockholder value. For fiscal 2013, the principal components for our executive officers were cash base salary with variable annual cash and long term equity incentives. Please read the *Compensation Discussion and Analysis* for additional details about our executive compensation programs, including information about the fiscal year 2013 compensation of our named executive officers and how our executive compensation programs reflect our philosophy and are linked to the Company's performance.

We are asking our stockholders to indicate their support for the compensation arrangements with our named executive officers as described in this proxy statement. This proposal, commonly known as a "say-on-pay" proposal, gives our stockholders the opportunity to express their views on our named executive officers' compensation. Accordingly, we are asking our stockholders to vote **FOR** the following resolution to be presented at the 2013 Annual Meeting:

RESOLVED, that the stockholders approve the compensation paid to the Company's named executive officers, as disclosed in the Company's Proxy Statement for the 2013 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the Compensation Discussion and Analysis, the compensation tables and the accompanying narrative discussion.

**Vote Required and Board of Directors Recommendation**

The proposal requires the affirmative vote of a majority of the votes cast for or against the proposal at the 2013 Annual Meeting, as well as the presence of a quorum representing a majority of the shares of our common stock entitled to vote at the 2013 Annual Meeting, present in person or represented by proxy. Abstentions and broker non-votes will each be counted as present for purposes of determining a quorum but will not have any effect on the outcome of the proposal.

This "say-on-pay" vote is advisory, and therefore is not binding on us, the Compensation Committee or our Board. Our Board and our Compensation Committee value the opinions of our stockholders, and to the extent there is any significant vote against the named executive officer compensation as disclosed in this proxy statement, we will consider our stockholders' concerns and the Compensation Committee will evaluate whether any actions are appropriate to address those concerns. The Board has adopted a policy providing for annual say-on-pay

advisory votes. Unless the Board modifies this policy, the next say-on-pay advisory vote will be held at our 2014 Annual Meeting.

**OUR BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE RESOLUTION ABOVE, RELATING TO THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS, AS DISCLOSED IN THIS PROXY STATEMENT PURSUANT TO THE COMPENSATION DISCLOSURE RULES OF THE SECURITIES AND EXCHANGE COMMISSION.**

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**PROPOSAL THREE:**

**RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS**

**FOR THE FISCAL YEAR ENDING JUNE 30, 2014**

The Audit Committee has appointed KPMG LLP ( KPMG ) as the Company's independent registered public accounting firm to serve as independent auditors to audit our consolidated financial statements for the fiscal year ending June 30, 2014. KPMG has served as the Company's independent registered public accounting firm since November 2010. A representative of KPMG is expected to be present at the 2013 Annual Meeting, will have an opportunity to make a statement if desired and will be available to respond to appropriate questions.

Representatives of our independent auditors normally attend most meetings of the Audit Committee. The Audit Committee's policy is to pre-approve all audit and permissible non-audit services provided by our independent auditors. These services may include audit services, audit-related services, tax services and other services. Any pre-approval is detailed as to the particular service or category of services. Our independent auditors and management are required to periodically report to the Audit Committee regarding the extent of services provided by our independent auditors in accordance with this pre-approval policy. For fiscal year 2013 and 2012, all fees paid to our independent auditors were pre-approved in accordance with this policy without exception.

The Audit Committee on an annual basis reviews the services performed by the independent registered public accounting firm, and reviews and approves the fees charged by the accounting firm. The Audit Committee has considered the role of the independent registered public accounting firm in providing tax and other non-audit services to us and has concluded that these services are compatible with the accounting firm's independence as our independent auditors.

**Principal Accounting Fees and Services**

The following table sets forth the fees accrued or paid to the Company's independent registered public accounting firms for the fiscal years ended June 30, 2013 and June 30, 2012.

|                                   | <b>2013</b>         | <b>2012</b>       |
|-----------------------------------|---------------------|-------------------|
| Audit fees <sup>(1)</sup>         | \$ 1,042,000        | \$ 880,000        |
| Audit related fees <sup>(2)</sup> |                     | 26,200            |
| Tax Fees <sup>(3)</sup>           |                     |                   |
| <b>Total</b>                      | <b>\$ 1,042,000</b> | <b>\$ 906,200</b> |

- (1) Audit fees relate to professional services rendered in connection with the audit of our annual financial statements and internal control over financial reporting, quarterly review of financial statements included in the Company's Quarterly Reports on Form 10-Q and audit services provided in connection with other statutory and regulatory filings.
- (2) Audit-related fees comprise fees for professional services that are reasonably related to the performance of the audit or review of the Company's financial statements.
- (3) Tax fees relate to professional services rendered in connection with tax audits, international tax compliance, and international tax consulting and planning services.

**Vote Required and Board of Directors Recommendation**

Stockholder ratification of the selection of KPMG as our independent registered public accounting firm is not required by our bylaws or otherwise. Our Board, however, is submitting the selection of KPMG to stockholders for ratification as a matter of good corporate practice. If stockholders fail to ratify the selection, the Audit Committee and our Board will reconsider whether or not to retain that firm. Even if the selection is ratified, the Audit Committee and our Board in their discretion may direct the appointment of different

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independent auditors at any time during the year if they determine that such a change would be in the best interests of us and our stockholders.

Approval of this proposal requires the affirmative vote of a majority of the votes cast affirmatively or negatively on the proposal, assuming a quorum is present. Votes for, against, abstentions and broker non-votes will each be counted as present for purposes of determining the presence of a quorum, but abstentions and broker non-votes will not have any effect on the outcome of the vote on this proposal. If you sign and return a proxy card without giving specific voting instructions on this proposal, your shares will be voted in favor of the proposal.

**OUR BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE PROPOSAL TO RATIFY KPMG LLP AS EXTREME NETWORKS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING JUNE 30, 2014.**



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**PROPOSAL FOUR:**

**ADOPTION OF THE EXTREME NETWORKS, INC. 2013 EQUITY INCENTIVE PLAN**

At the annual meeting, the stockholders will be asked to approve the Extreme Networks, Inc. 2013 Equity Incentive Plan (the 2013 Plan ). The Board of Directors adopted the 2013 Plan on October 1, 2013, subject to and effective upon its approval by stockholders. The 2013 Plan is intended to replace our 2005 Equity Incentive Plan ( the 2005 Plan and together with our previously terminated 1996 Stock Option Plan, 2000 Stock Plan and 2001 Stock Plan, the Predecessor Plans ). If the stockholders approve the 2013 Plan, it will become effective on the day of the annual meeting, and no further awards will be granted under the 2005 Plan, which will be terminated.

**Reasons for Adoption of 2013 Plan and Share Authorization**

We operate in a challenging marketplace in which our success depends to a great extent on our ability to attract and retain employees, directors and other service providers of the highest caliber. One of the tools our Board of Directors regards as essential in addressing these challenges is a competitive equity incentive program. Our employee stock incentive program provides a range of incentive tools and sufficient flexibility to permit the Compensation Committee of the Board to implement them in ways that will make the most effective use of the shares our stockholders authorize for incentive purposes. We intend to use these incentives to attract new key employees and to continue to retain existing key employees, directors and other service providers for the long-term benefit of the Company and its stockholders.

The Board of Directors has determined that it is in the best interests of the Company to adopt the 2013 Plan and is asking the Company's stockholders to approve the 2013 Plan. If the stockholders approve the 2013 Plan, we will not make new grants under the 2005 Plan. If the stockholders do not approve the 2013 Plan, the 2005 Plan will remain in place, but we may not have a sufficient number of shares under the 2005 Plan to meet our anticipated needs, and we will not be permitted to grant any awards under the 2005 Plan upon its expiration in 2015.

The 2013 Plan authorizes the Compensation Committee to provide incentive compensation in the form of stock options, stock appreciation rights, restricted stock and stock units, performance shares and units, other stock-based awards and cash-based awards. Under the 2013 Plan, we will be authorized to issue up to 9,000,000 shares, increased by not more than 14,181,073 shares comprised of:

the aggregate number of shares of stock that remain available for the future grant of awards under the 2005 Plan immediately prior to its termination; and

the number of shares subject to any award outstanding under a Predecessor Plan that expires or is forfeited for any reason after the date of the annual meeting (provided that 1.5 shares will be returned to the 2013 Plan for each share subject to a forfeited full value award under the 2005 Plan in keeping with that plan's full value award multiplier for share pool usage).

As of June 30, 2013, the end of our most recently completed fiscal year, options were outstanding under the Predecessor Plans for a total of 9,145,420 shares of our common stock, with a weighted average exercise price of \$3.66 per share and weighted average expected remaining term of approximately 4.89 years, and a total of 2,686,560 shares remained subject to unvested awards of restricted stock and restricted stock units outstanding under the Predecessor Plans. As of that date, a total of 3,615,342 shares remained available for the future grant of awards under the 2005 Plan. The 2005 Plan will be terminated upon stockholder approval of the 2013 Plan.

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In operating our Predecessor Plans, we believe the Compensation Committee monitored and managed dilution to reasonable levels. Excluding fiscal 2013, a year in which we granted a number of sizeable one-time new hire awards in connection with significant turnover among our executive officers, including the hiring of a new Chief Executive Officer, our historical average annual burn rate (gross number of shares granted during the

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year divided by weighted common shares outstanding) has been below the burn rate threshold target for our industry as established by Institutional Shareholder Services Inc. In order to continue to minimize the dilutive impact on the Company's stockholders of grants of equity-based awards to directors, employees and consultants of the Company and its subsidiaries, the Company's Board of Directors adopted a burn rate policy for fiscal years 2014 through 2016 to be effective if the Company's stockholders approve this proposal. During this three year period, beginning with the Company's 2014 fiscal year and ending with the Company's 2016 fiscal year, the burn rate policy will require the Company to limit the number of shares that it grants subject to stock awards over the three year period to no more than an annual average of 5.77% of the Company's outstanding common stock (which is equal to the median burn rate plus one standard deviation for Russell 3000 companies in the Company's Global Industry Classification Standards Peer Group (Technology Hardware and Equipment), as published by Institutional Shareholder Services in 2012).

The annual burn rate will be calculated as the number of shares subject to stock awards (including stock options, stock appreciation rights, restricted stock, restricted stock units and other stock awards) granted during each fiscal year (although for purposes of this analysis the number of shares subject to performance-based equity awards will be counted in the fiscal year that they are earned instead of the fiscal year in which they are granted) divided by the Company's weighted average number of shares of common stock outstanding for each fiscal year, both as reported in the Company's periodic filings with the SEC. Awards that are settled in cash, awards that are granted pursuant to stockholder approved exchange programs, awards sold under the Company's employee stock purchase plan and awards assumed or substituted in acquisitions will be excluded from the burn rate calculation. For purposes of the burn rate calculation, each share subject to a full value award (i.e., restricted stock, restricted stock units, performance shares and any other award that does not have an exercise price per share equal to the per share fair market value of the Company's common stock on the grant date) will count as 2.0 shares.

Among the factors our Board of Directors considered in determining the appropriate size of the 2013 Plan share authorization was the fact we recently entered into an agreement to acquire Enterasys Networks, Inc. ( Enterasys ), which will increase the size and scope of our operations. If the transaction closes as anticipated, the addition of Enterasys will essentially double the size of our workforce, as compared to our pre-acquisition workforce. While in connection with this acquisition we will assume outstanding Enterasys equity awards, subject to future vesting, the Board of Directors has taken into account the additional shares that will be needed in the future to provide ongoing equity incentives to our expanded workforce.

After carefully forecasting our anticipated growth rate for the next few years, including the impact of the Enterasys transaction and considering our historical forfeiture rates, we currently believe that the proposed share authorization under the 2013 Plan will be sufficient for us to make anticipated grants of equity incentive awards under our current compensation program for the next two years. However, changes in business conditions, Company strategy or equity market performance could alter this projection.

### **Key Features of 2013 Plan**

Key features of the 2013 Plan of particular interest to our stockholders reflect best practices and mirror those of our 2005 Plan:

The 2013 Plan does not include an evergreen provision to automatically increase the number of shares available under it.

Stock options and stock appreciation rights may not be repriced without the approval of our stockholders.

No discount from fair market value is permitted in setting the exercise price of stock options and stock appreciation rights.

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Stock options and stock appreciation rights have a maximum term of seven years.

Each share subject to a full value award (i.e., an award settled in stock, other than an option, stock appreciation right or other award that requires the participant to purchase shares for monetary

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consideration equal to their fair market value at grant) will reduce the number of shares remaining available for grant under the 2013 Plan by 1.5 shares.

The number of shares remaining for grant under the 2013 Plan is reduced by the gross number of shares subject to options and stock appreciation rights settled on a net basis, and shares withheld for taxes in connection with options or stock appreciation rights or tendered in payment of an option's exercise price are not recycled.

The number of shares for which awards may be granted to any nonemployee member of our Board of Directors in a fiscal year is limited.

The 2013 Plan establishes a list of measures of business and financial performance from which the Compensation Committee may construct predetermined performance goals that must be met for an award to vest.

The 2013 Plan has a fixed term of ten years.

The 2013 Plan is designed to preserve the Company's ability to deduct in full for federal income tax purposes the compensation recognized by its executive officers in connection with certain types of awards. Section 162(m) of the Internal Revenue Code (the "Code") generally denies a corporate tax deduction for annual compensation exceeding \$1 million paid to the chief executive officer or any of the three other most highly compensated officers of a publicly held company other than the chief financial officer (the "covered employees"). However, qualified performance-based compensation is excluded from this limit. To enable compensation in connection with stock options, stock appreciation rights, certain restricted stock and restricted stock unit awards, performance shares, performance units and certain other stock-based awards and cash-based awards granted under the 2013 Plan to qualify as "performance-based" within the meaning of Section 162(m), the stockholders are being asked to approve certain material terms of the 2013 Plan. By approving the 2013 Plan, the stockholders will be specifically approving, among other things:

the eligibility requirements for participation in the 2013 Plan;

the maximum numbers of shares for which stock-based awards intended to qualify as performance-based may be granted to an employee in any fiscal year;

the maximum dollar amount that a participant may receive under a cash-based award intended to qualify as performance-based for each fiscal year contained in the performance period; and

the performance measures that may be used by the Compensation Committee to establish the performance goals applicable to the grant or vesting of awards of restricted stock, restricted stock units, performance shares, performance units, other stock-based awards and cash-based awards that are intended to result in qualified performance-based compensation.

While we believe that compensation provided by such awards under the 2013 Plan generally will be deductible by the Company for federal income tax purposes, under certain circumstances, such as a change in control of the Company, compensation paid in settlement of certain awards may not qualify as performance-based. Further, the Compensation Committee will retain the discretion to grant awards to covered employees that are not intended to qualify for deduction in full under Section 162(m).

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The Board of Directors believes that the 2013 Plan will serve a critical role in attracting and retaining the high caliber employees, consultants and directors essential to our success and in motivating these individuals to strive to meet our goals. Therefore, the Board urges you to vote to approve the adoption of the 2013 Plan.

### **Summary of the 2013 Plan**

The following summary of the 2013 Plan is qualified in its entirety by the specific language of the 2013 Plan, a copy of which is attached to this proxy statement as Appendix A.

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**General.** The purpose of the 2013 Plan is to advance the interests of the Company and its stockholders by providing an incentive program that will enable the Company to attract and retain employees, consultants and directors and to provide them with an equity interest in the growth and profitability of the Company. These incentives may be provided through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance units, other stock-based awards and cash-based awards.

**Authorized Shares.** The maximum aggregate number of shares authorized for issuance under the 2013 Plan is the sum of 9,000,000 shares plus up to 14,181,073 additional shares, comprised of the number of shares remaining available for grant under the 2005 Plan on the date of the annual meeting and the number of shares subject to any option or other award outstanding under a Predecessor Plan that expires or is forfeited for any reason after the date of the annual meeting. As of October 1, 2013, there were 3,063,971 shares remaining available for grant under the 2005 Plan and 11,117,102 shares subject to unexercised options and other awards remaining unvested and subject to potential forfeiture under the Predecessor Plans.

**Share Counting.** Each share subject to a stock option, stock appreciation right, or other award that requires the participant to purchase shares for their fair market value determined at the time of grant will reduce the number of shares remaining available for grant under the 2013 Plan by one share. However, each share subject to a full value award (i.e., an award settled in stock, other than an option, stock appreciation right, or other award that requires the participant to purchase shares for their fair market value determined at grant) will reduce the number of shares remaining available for grant under the 2013 Plan by 1.5 shares.

If any award granted under the 2013 Plan expires or otherwise terminates for any reason without having been exercised or settled in full, or if shares subject to forfeiture or repurchase are forfeited or repurchased by the Company for not more than the participant's purchase price, any such shares reacquired or subject to a terminated award will again become available for issuance under the 2013 Plan. Shares will not be treated as having been issued under the 2013 Plan and will therefore not reduce the number of shares available for issuance to the extent an award is settled in cash. Shares that are withheld or reacquired by the Company in satisfaction of a tax withholding obligation in connection with an option or a stock appreciation right or that are tendered in payment of the exercise price of an option will not be made available for new awards under the 2013 Plan. Upon the exercise of a stock appreciation right or net-exercise of an option, the number of shares available under the 2013 Plan will be reduced by the gross number of shares for which the award is exercised.

**Adjustments for Capital Structure Changes.** Appropriate and proportionate adjustments will be made to the number of shares authorized under the 2013 Plan, to the numerical limits on certain types of awards described below, and to outstanding awards in the event of any change in our common stock through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares or similar change in our capital structure, or if we make a distribution to our stockholders in a form other than common stock (excluding regular, periodic cash dividends) that has a material effect on the fair market value of our common stock. In such circumstances, the Compensation Committee also has the discretion under the 2013 Plan to adjust other terms of outstanding awards as it deems appropriate.

**Nonemployee Director Award Limits.** A nonemployee director may not be granted awards under the 2013 Plan for more than 200,000 shares in any fiscal year.

**Other Award Limits.** To enable compensation provided in connection with certain types of awards intended to qualify as performance-based within the meaning of Section 162(m) of the Code, the 2013 Plan establishes a limit on the maximum aggregate number of shares or dollar value for which such awards may be granted to an employee in any fiscal year, as follows:

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No more than 4,000,000 shares under stock options and stock appreciation rights.

No more than 1,000,000 shares under restricted stock and restricted stock unit awards.



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No more than 1,000,000 shares or \$2,000,000 for each full fiscal year contained in the performance period under performance share and performance unit awards.

No more than 1,000,000 shares or \$2,000,000 for each full fiscal year contained in the performance period under other stock-based or cash-based awards.

In addition, to comply with applicable tax rules, the 2013 Plan also limits to 9,000,000 the number of shares that may be issued upon the exercise of incentive stock options granted under the 2013 Plan.

**Administration.** The 2013 Plan generally will be administered by the Compensation Committee of the Board of Directors, although the Board retains the right to appoint another of its committees to administer the 2013 Plan or to administer the 2013 Plan directly. In the case of awards intended to qualify for the performance-based compensation exemption under Section 162(m) of the Code, administration of the 2013 Plan must be by a compensation committee comprised solely of two or more outside directors within the meaning of Section 162(m). For purposes of this summary, the term Compensation Committee will refer to either such duly appointed committee or the Board of Directors. Subject to the provisions of the 2013 Plan, the Compensation Committee determines in its discretion the persons to whom and the times at which awards are granted, the types and sizes of awards, and all of their terms and conditions. The Compensation Committee may, subject to certain limitations on the exercise of its discretion required by Section 162(m) or otherwise provided by the 2013 Plan, amend, cancel or renew any award, waive any restrictions or conditions applicable to any award, and accelerate, continue, extend or defer the vesting of any award.

The 2013 Plan provides, subject to certain limitations, for indemnification by the Company of any director, officer or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the 2013 Plan. All awards granted under the 2013 Plan will be evidenced by a written or digitally signed agreement between the Company and the participant specifying the terms and conditions of the award, consistent with the requirements of the 2013 Plan. The Compensation Committee will interpret the 2013 Plan and awards granted under it, and all determinations of the Compensation Committee generally will be final and binding on all persons having an interest in the 2013 Plan or any award.

**Prohibition of Option and SAR Repricing.** The 2013 Plan expressly provides that, without the approval of a majority of the votes cast in person or by proxy at a meeting of our stockholders, the Compensation Committee may not provide for any of the following with respect to underwater options or stock appreciation rights: (1) either the cancellation of such outstanding options or stock appreciation rights in exchange for the grant of new options or stock appreciation rights at a lower exercise price or the amendment of outstanding options or stock appreciation rights to reduce the exercise price, (2) the issuance of new full value awards in exchange for the cancellation of such outstanding options or stock appreciation rights, or (3) the cancellation of such outstanding options or stock appreciation rights in exchange for payments in cash.

**Eligibility.** Awards may be granted to employees, directors and consultants of the Company or any present or future parent or subsidiary corporation or other affiliated entity of the Company. Incentive stock options may be granted only to employees who, as of the time of grant, are employees of the Company or any parent or subsidiary corporation of the Company. As of October 1, 2013, we had approximately 65 employees, including 5 executive officers, and eight non-employee directors who would be eligible under the 2013 Plan.

**Stock Options.** The Compensation Committee may grant nonstatutory stock options, incentive stock options within the meaning of Section 422 of the Code, or any combination of these. The exercise price of each option may not be less than 100% of the fair market value of a share of our common stock on the date of grant. However, any incentive stock option granted to a person who at the time of grant owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company (a 10% Stockholder) must have an exercise price equal to at least 110% of the fair market value of a share of common stock on the date of grant.



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The 2013 Plan provides that the option exercise price may be paid in cash, by check, or cash equivalent; by means of a broker-assisted cashless exercise; by means of a net-exercise procedure; to the extent legally permitted, by tender to the Company of shares of common stock owned by the participant having a fair market value not less than the exercise price; by such other lawful consideration as approved by the Compensation Committee; or by any combination of these. Nevertheless, the Compensation Committee may restrict the forms of payment permitted in connection with any option grant. No option may be exercised unless the participant has made adequate provision for federal, state, local and foreign taxes, if any, relating to the exercise of the option, including, if permitted or required by the Company, through the participant's surrender of a portion of the option shares to the Company.

Options will become vested and exercisable at such times or upon such events and subject to such terms, conditions, performance criteria or restrictions as specified by the Compensation Committee. The maximum term of any option granted under the 2013 Plan is seven years, provided that an incentive stock option granted to a 10% Stockholder must have a term not exceeding five years. Unless otherwise permitted by the Compensation Committee, an option generally will remain exercisable for three months following the participant's termination of service, provided that if service terminates as a result of the participant's death or disability, the option generally will remain exercisable for 12 months, but in any event the option must be exercised no later than its expiration date, and provided further that an option will terminate immediately upon a participant's termination for cause (as defined by the 2013 Plan).

Options are nontransferable by the participant other than by will or by the laws of descent and distribution, and are exercisable during the participant's lifetime only by the participant. However, an option may be assigned or transferred to certain family members or trusts for their benefit to the extent permitted by the Compensation Committee and, in the case of an incentive stock option, only to the extent that the transfer will not terminate its tax qualification.

***Stock Appreciation Rights.*** The Compensation Committee may grant stock appreciation rights either in tandem with a related option (a Tandem SAR) or independently of any option (a Freestanding SAR). A Tandem SAR requires the option holder to elect between the exercise of the underlying option for shares of common stock or the surrender of the option and the exercise of the related stock appreciation right. A Tandem SAR is exercisable only at the time and only to the extent that the related stock option is exercisable, while a Freestanding SAR is exercisable at such times or upon such events and subject to such terms, conditions, performance criteria or restrictions as specified by the Compensation Committee. The exercise price of each stock appreciation right may not be less than 100% of the fair market value of a share of our common stock on the date of grant.

Upon the exercise of any stock appreciation right, the participant is entitled to receive an amount equal to the excess of the fair market value of the underlying shares of common stock as to which the right is exercised over the aggregate exercise price for such shares. Payment of this amount upon the exercise of a Tandem SAR may be made only in shares of common stock whose fair market value on the exercise date equals the payment amount. At the Compensation Committee's discretion, payment of this amount upon the exercise of a Freestanding SAR may be made in cash or shares of common stock. The maximum term of any stock appreciation right granted under the 2013 Plan is seven years.

Stock appreciation rights are generally nontransferable by the participant other than by will or by the laws of descent and distribution, and are generally exercisable during the participant's lifetime only by the participant. If permitted by the Compensation Committee, a Tandem SAR related to a nonstatutory stock option and a Freestanding SAR may be assigned or transferred to certain family members or trusts for their benefit to the extent permitted by the Compensation Committee. Other terms of stock appreciation rights are generally similar to the terms of comparable stock options.

***Restricted Stock Awards.*** The Compensation Committee may grant restricted stock awards under the 2013 Plan either in the form of a restricted stock purchase right, giving a participant an immediate right to purchase



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common stock, or in the form of a restricted stock bonus, in which stock is issued in consideration for services to the Company rendered by the participant. The Compensation Committee determines the purchase price payable under restricted stock purchase awards, which may be less than the then current fair market value of our common stock. Restricted stock awards may be subject to vesting conditions based on such service or performance criteria as the Compensation Committee specifies, including the attainment of one or more performance goals similar to those described below in connection with performance awards. Shares acquired pursuant to a restricted stock award may not be transferred by the participant until vested. Unless otherwise provided by the Compensation Committee, a participant will forfeit any shares of restricted stock as to which the vesting restrictions have not lapsed prior to the participant's termination of service. Unless otherwise determined by the Compensation Committee, participants holding restricted stock will have the right to vote the shares and to receive any dividends paid, except that dividends or other distributions paid in shares will be subject to the same restrictions as the original award and dividends paid in cash may be subject to such restrictions.

***Restricted Stock Units.*** The Compensation Committee may grant restricted stock units under the 2013 Plan, which represent rights to receive shares of our common stock at a future date determined in accordance with the participant's award agreement. No monetary payment is required for receipt of restricted stock units or the shares issued in settlement of the award, the consideration for which is furnished in the form of the participant's services to the Company. The Compensation Committee may grant restricted stock unit awards subject to the attainment of one or more performance goals similar to those described below in connection with performance awards, or may make the awards subject to vesting conditions similar to those applicable to restricted stock awards. Unless otherwise provided by the Compensation Committee, a participant will forfeit any restricted stock units which have not vested prior to the participant's termination of service. Participants have no voting rights or rights to receive cash dividends with respect to restricted stock unit awards until shares of common stock are issued in settlement of such awards. However, the Compensation Committee may grant restricted stock units that entitle their holders to dividend equivalent rights, which are rights to receive cash or additional restricted stock units whose value is equal to any cash dividends the Company pays.

***Performance Awards.*** The Compensation Committee may grant performance awards subject to such conditions and the attainment of such performance goals over such periods as the Compensation Committee determines in writing and sets forth in a written agreement between the Company and the participant. These awards may be designated as performance shares or performance units, which consist of unfunded bookkeeping entries generally having initial values equal to the fair market value determined on the grant date of a share of common stock in the case of performance shares and a monetary value established by the Compensation Committee at the time of grant in the case of performance units. Performance awards will specify a predetermined amount of performance shares or performance units that may be earned by the participant to the extent that one or more performance goals are attained within a predetermined performance period. To the extent earned, performance awards may be settled in cash, shares of common stock (including shares of restricted stock that are subject to additional vesting) or any combination of these.

Prior to the beginning of the applicable performance period or such later date as permitted under Section 162(m) of the Code, the Compensation Committee will establish one or more performance goals applicable to the award. Performance goals will be based on the attainment of specified target levels with respect to one or more measures of business or financial performance of the Company and each subsidiary corporation consolidated with the Company for financial reporting purposes, or such division or business unit of the Company as may be selected by the Compensation Committee. The Compensation Committee, in its discretion, may base performance goals on one or more of the following measures: revenue; sales; expenses; operating income; gross margin; operating margin; earnings before any one or more of: stock-based compensation expense, interest, taxes, depreciation and amortization; pre-tax profit; net operating income; net income; economic value added; free cash flow; operating cash flow; balance of cash, cash equivalents and marketable securities; stock price; earnings per share; return on stockholder equity; return on capital; return on assets; return on investment; total stockholder return, employee satisfaction; employee retention; market share; customer satisfaction; product development; research and development expense; completion of an identified special project; completion of a joint venture or other corporate transaction and new customer acquisition.

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The target levels with respect to these performance measures may be expressed on an absolute basis or relative to an index, budget or other standard specified by the Compensation Committee. The degree of attainment of performance measures will be calculated in accordance with generally accepted accounting principles, if applicable, but prior to the accrual or payment of any performance award for the same performance period, and, according to criteria established by the Compensation Committee, excluding the effect (whether positive or negative) of changes in accounting standards or any extraordinary, unusual or nonrecurring item occurring after the establishment of the performance goals applicable to a performance award.

Following completion of the applicable performance period, the Compensation Committee will certify in writing the extent to which the applicable performance goals have been attained and the resulting value to be paid to the participant. The Compensation Committee retains the discretion to eliminate or reduce, but not increase, the amount that would otherwise be payable on the basis of the performance goals attained to a participant who is a covered employee within the meaning of Section 162(m) of the Code. However, no such reduction may increase the amount paid to any other participant. The Compensation Committee may make positive or negative adjustments to performance award payments to participants other than covered employees to reflect the participant's individual job performance or other factors determined by the Compensation Committee. In its discretion, the Compensation Committee may provide for a participant awarded performance shares to receive dividend equivalent rights with respect to cash dividends paid on our common stock to the extent of the performance shares that become nonforfeitable. The Compensation Committee may provide for performance award payments in lump sums or installments.

Unless otherwise provided by the Compensation Committee, if a participant's service terminates due to the participant's death or disability prior to completion of the applicable performance period, the final award value will be determined at the end of the performance period on the basis of the performance goals attained during the entire performance period but will be prorated for the number of months of the participant's service during the performance period. If a participant's service terminates prior to completion of the applicable performance period for any other reason, the 2013 Plan provides that, unless otherwise determined by the Compensation Committee, the performance award will be forfeited. No performance award may be sold or transferred other than by will or the laws of descent and distribution prior to the end of the applicable performance period.

***Cash-Based Awards and Other Stock-Based Awards.*** The Compensation Committee may grant cash-based awards or other stock-based awards in such amounts and subject to such terms and conditions as the Compensation Committee determines. Cash-based awards will specify a monetary payment or range of payments, while other stock-based awards will specify a number of shares or units based on shares or other equity-related awards. Such awards may be subject to vesting conditions based on continued performance of service or subject to the attainment of one or more performance goals similar to those described above in connection with performance awards. Settlement of awards may be in cash or shares of common stock, as determined by the Compensation Committee. A participant will have no voting rights with respect to any such award unless and until shares are issued pursuant to the award. The Compensation Committee may grant dividend equivalent rights with respect to other stock-based awards. The effect on such awards of the participant's termination of service will be determined by the Compensation Committee and set forth in the participant's award agreement.

***Change in Control.*** Unless otherwise defined in a participant's award or other agreement with the Company, the 2013 Plan provides that a Change in Control occurs upon (a) a person or entity (with certain exceptions described in the 2013 Plan) becoming the direct or indirect beneficial owner of more than 50% of the Company's voting stock; (b) stockholder approval of a liquidation or dissolution of the Company; or (c) the occurrence of any of the following events upon which the stockholders of the Company immediately before the event do not retain immediately after the event direct or indirect beneficial ownership of more than 50% of the voting securities of the Company, its successor or the entity to which the assets of the company were transferred: (i) a sale or exchange by the stockholders in a single transaction or series of related transactions of more than 50% of the Company's voting stock; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

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If a Change in Control occurs, the surviving, continuing, successor or purchasing entity or its parent may, without the consent of any participant, either assume or continue outstanding awards or substitute substantially equivalent awards for its stock. If so determined by the Compensation Committee, stock-based awards will be deemed assumed if, for each share subject to the award prior to the Change in Control, its holder is given the right to receive the same amount of consideration that a stockholder would receive as a result of the Change in Control. Any awards which are not assumed or continued in connection with a Change in Control or exercised or settled prior to the Change in Control will terminate effective as of the time of the Change in Control. Subject to the restrictions of Section 409A of the Code, the Compensation Committee may provide for the acceleration of vesting or settlement of any or all outstanding awards upon such terms and to such extent as it determines. The 2013 Plan also authorizes the Compensation Committee, in its discretion and without the consent of any participant, to cancel each or any award denominated in shares of stock upon a Change in Control in exchange for a payment to the participant with respect each vested share (and each unvested share if so determined by the Compensation Committee) subject to the cancelled award of an amount equal to the excess of the consideration to be paid per share of common stock in the Change in Control transaction over the exercise price per share, if any, under the award. The vesting of all awards held by non-employee directors will be accelerated in full upon a Change in Control.

***Awards Subject to Section 409A of the Code.*** Certain awards granted under the 2013 Plan may be deemed to constitute deferred compensation within the meaning of Section 409A of the Code, providing rules regarding the taxation of nonqualified deferred compensation plans, and the regulations and other administrative guidance issued pursuant to Section 409A. Any such awards will be required to comply with the requirements of Section 409A. Notwithstanding any provision of the 2013 Plan to the contrary, the Compensation Committee is authorized, in its sole discretion and without the consent of any participant, to amend the 2013 Plan or any award agreement as it deems necessary or advisable to comply with Section 409A.

***Amendment, Suspension or Termination.*** The 2013 Plan will continue in effect until its termination by the Compensation Committee, provided that no awards may be granted under the 2013 Plan following the tenth anniversary of the 2013 Plan's effective date, which will be the date on which it is approved by the stockholders. The Compensation Committee may amend, suspend or terminate the 2013 Plan at any time, provided that no amendment may be made without stockholder approval that would increase the maximum aggregate number of shares of stock authorized for issuance under the 2013 Plan, change the class of persons eligible to receive incentive stock options or require stockholder approval under any applicable law. No amendment, suspension or termination of the 2013 Plan may affect any outstanding award unless expressly provided by the Compensation Committee, and, in any event, may not have a materially adverse effect on an outstanding award without the consent of the participant unless necessary to comply with any applicable law, regulation or rule, including, but not limited to, Section 409A of the Code.

**Summary of U.S. Federal Income Tax Consequences**

The following summary is intended only as a general guide to the U.S. federal income tax consequences of participation in the 2013 Plan and does not attempt to describe all possible federal or other tax consequences of such participation or tax consequences based on particular circumstances.

***Incentive Stock Options.*** A participant recognizes no taxable income for regular income tax purposes as a result of the grant or exercise of an incentive stock option qualifying under Section 422 of the Code. Participants who neither dispose of their shares within two years following the date the option was granted nor within one year following the exercise of the option will normally recognize a capital gain or loss upon the sale of the shares equal to the difference, if any, between the sale price and the purchase price of the shares. If a participant satisfies such holding periods upon a sale of the shares, we will not be entitled to any deduction for federal income tax purposes. If a participant disposes of shares within two years after the date of grant or within one year after the date of exercise (a disqualifying disposition), the difference between the fair market value of the shares on the option exercise date and the exercise price (not to exceed the gain realized on the sale if the





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disposition is a transaction with respect to which a loss, if sustained, would be recognized) will be taxed as ordinary income at the time of disposition. Any gain in excess of that amount will be a capital gain. If a loss is recognized, there will be no ordinary income, and such loss will be a capital loss. Any ordinary income recognized by the participant upon the disqualifying disposition of the shares generally should be deductible by us for federal income tax purposes, except to the extent such deduction is limited by applicable provisions of the Code.

In general, the difference between the option exercise price and the fair market value of the shares on the date of exercise of an incentive stock option is treated as an adjustment in computing the participant's alternative minimum taxable income and may be subject to an alternative minimum tax which is paid if such tax exceeds the regular tax for the year. Special rules may apply with respect to certain subsequent sales of the shares in a disqualifying disposition, certain basis adjustments for purposes of computing the alternative minimum taxable income on a subsequent sale of the shares and certain tax credits which may arise with respect to participants subject to the alternative minimum tax.

***Nonstatutory Stock Options.*** Options not designated or qualifying as incentive stock options are nonstatutory stock options having no special tax status. A participant generally recognizes no taxable income upon receipt of such an option. Upon exercising a nonstatutory stock option, the participant normally recognizes ordinary income equal to the difference between the exercise price paid and the fair market value of the shares on the date when the option is exercised. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. Upon the sale of stock acquired by the exercise of a nonstatutory stock option, any gain or loss, based on the difference between the sale price and the fair market value of the shares on the exercise date, will be taxed as capital gain or loss. We generally should be entitled to a tax deduction equal to the amount of ordinary income recognized by the participant as a result of the exercise of a nonstatutory stock option, except to the extent such deduction is limited by applicable provisions of the Code.

***Stock Appreciation Rights.*** A Participant recognizes no taxable income upon the receipt of a stock appreciation right. Upon the exercise of a stock appreciation right, the participant generally will recognize ordinary income in an amount equal to the excess of the fair market value of the underlying shares of common stock on the exercise date over the exercise price. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. We generally should be entitled to a deduction equal to the amount of ordinary income recognized by the participant in connection with the exercise of the stock appreciation right, except to the extent such deduction is limited by applicable provisions of the Code.

***Restricted Stock.*** A participant acquiring restricted stock generally will recognize ordinary income equal to the excess of the fair market value of the shares on the determination date over the price paid, if any, for such shares. The determination date is the date on which the participant acquires the shares unless the shares are subject to a substantial risk of forfeiture and are not transferable, in which case the determination date is the earlier of (i) the date on which the shares become transferable or (ii) the date on which the shares are no longer subject to a substantial risk of forfeiture (e.g., when they become vested). If the determination date follows the date on which the participant acquires the shares, the participant may elect, pursuant to Section 83(b) of the Code, to designate the date of acquisition as the determination date by filing an election with the Internal Revenue Service no later than 30 days after the date on which the shares are acquired. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. Upon the sale of shares acquired pursuant to a restricted stock award, any gain or loss, based on the difference between the sale price and the fair market value of the shares on the determination date, will be taxed as capital gain or loss. We generally should be entitled to a deduction equal to the amount of ordinary income recognized by the participant on the determination date, except to the extent such deduction is limited by applicable provisions of the Code.

***Restricted Stock Unit, Performance, Cash-Based and Other Stock-Based Awards.*** A participant generally will recognize no income upon the receipt of a restricted stock unit, performance share, performance unit, cash-

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based or other stock-based award. Upon the settlement of such awards, participants normally will recognize ordinary income in the year of settlement in an amount equal to the cash received and the fair market value of any substantially vested shares of stock received. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. If the participant receives shares of restricted stock, the participant generally will be taxed in the same manner as described above under Restricted Stock. Upon the sale of any shares received, any gain or loss, based on the difference between the sale price and the fair market value of the shares on the determination date (as defined above under Restricted Stock ), will be taxed as capital gain or loss. We generally should be entitled to a deduction equal to the amount of ordinary income recognized by the participant on the determination date, except to the extent such deduction is limited by applicable provisions of the Code.

## **New Plan Benefits**

No awards will be granted under the 2013 Plan prior to its approval by the stockholders of the Company. All awards will be granted at the discretion of the Compensation Committee, and, accordingly, are not yet determinable.

## **Required Vote and Board of Directors Recommendation**

Approval of this proposal requires the affirmative vote of a majority of the shares present or represented by proxy and entitled to vote on this proposal. Votes for, against, abstentions and broker non-votes will each be counted as present for purposes of determining the presence of a quorum. Abstentions will have the same effect as a negative vote on this proposal. Broker non-votes will not have any effect on the outcome of the vote on this proposal. If you sign and return a proxy card without giving specific voting instructions on this proposal, your shares will be voted in favor of the proposal.

The Board believes that the proposed adoption of the 2013 Plan is in the best interests of the Company and its stockholders for the reasons stated above.

**THEREFORE, THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR APPROVAL OF THE ADOPTION OF THE 2013 EQUITY INCENTIVE PLAN.**

**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth, as of September 15, 2013, certain information with respect to the beneficial ownership of our common stock by: (i) each stockholder known by us to be the beneficial owner of more than 5% of our common stock, (ii) each named executive officer, (iii) each of our directors and director nominees, and (iv) all executive officers and directors as a group.

Except as otherwise indicated, the address of each beneficial owner is c/o Extreme Networks, Inc., 145 Rio Robles, San Jose, California 95134.

| Name and Address <sup>(1)</sup>  | Amount of<br>Beneficial<br>Ownership <sup>(2)</sup> | Percent of<br>Class <sup>(3)</sup> |
|--|---|------------------------------------|
| <b>Holder of Greater than 5%:</b>  |   |                                    |
| Soros Fund Management LLC<br>888 Seventh Avenue, 33rd Floor<br>New York, New York 10106      | 9,236,249 <sup>(4)</sup>                            | 9.8%                               |
| Wellington Management Company, LLP<br>280 Congress Street<br><br>Boston, Massachusetts 02210 | 5,992,562 <sup>(5)</sup>                            | 6.4%                               |
| BlackRock<br>55 East 52 <sup>nd</sup> Street<br>New York, New York 10055                     | 5,094,787 <sup>(6)</sup>                            | 5.4%                               |
| <b>Directors and Named Executive Officers:</b>   |   |                                    |
| Maury Austin, Director   | 21,112 <sup>(7)</sup>                               | *                                  |
| Charles Carinalli, Director  | 424,216 <sup>(8)</sup>                              | *                                  |
| Edward H. Kennedy, Director  | 77,223 <sup>(9)</sup>                               | *                                  |
| John H. Kispert, Director  | 133,333 <sup>(10)</sup>                             | *                                  |
| Edward B. Meyercord, III, Independent Chairman of the Board of Directors                     | 144,333 <sup>(11)</sup>                             | *                                  |
| John C. Shoemaker, Director  | 173,333 <sup>(12)</sup>                             | *                                  |
| Harry Silverglide, Director  | 226,327 <sup>(13)</sup>                             | *                                  |
| Edward Terino, Director  | 111,112 <sup>(14)</sup>                             | *                                  |
| Charles W. Berger, President and Chief Executive Officer, Director                           | (15)  | *                                  |
| John Kurtzweil, Senior Vice President, Chief Financial Officer                               | 144,000 <sup>(16)</sup>                             | *                                  |
| Frank Blohm, Senior Vice President of Services, Operations and IT                            | 347,712 <sup>(17)</sup>                             | *                                  |
| Nancy Shemwell, Executive Vice President, Global Sales                                       | 101,042 <sup>(18)</sup>                             | *                                  |
| David Ginsburg, Former Senior Vice President, Chief Marketing Officer                        | (19)  | *                                  |
| <b>All Executive Officers and Directors as a Group (14 persons)</b>                          | <b>1,906,743<sup>(20)</sup></b>                     | <b>2.0%</b>                        |

\* Less than 1%

- (1) Except as otherwise indicated, the persons named in this table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them, subject to community property laws where applicable and to the information contained in the footnotes to this table.
- (2) Under the rules of the SEC, a person is deemed to be the beneficial owner of securities that can be acquired by the person within 60 days of September 15, 2013.
- (3) Calculated on the basis of 94,361,650 shares of common stock outstanding as of September 15, 2013, provided that any additional shares of common stock that a stockholder has the right to acquire within 60 days of September 15, 2013 are deemed to be outstanding for purposes of calculating that stockholder's percentage of beneficial ownership. These shares are not, however, deemed to be outstanding and beneficially owned for the purpose of computing the percentage ownership of any other person.

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- (4) According to a Form SC 13G/A filed by the stockholder with the SEC on February 14, 2013.
- (5) According to a Form SC 13G filed by the stockholder with the SEC on February 14, 2013.
- (6) According to a Form SC 13G/A filed by the stockholder with the SEC on February 8, 2013.

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- (7) Includes 8,334 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (8) Includes 180,000 shares issuable pursuant to options exercisable within 60 days of September 15, 2013
- (9) Includes 31,667 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (10) Includes 70,000 shares issuable pursuant to options exercisable within 60 days of September 15, 2013. Includes 20,000 shares held by the Kispert Family Trust UTD September 13, 2000.
- (11) Includes 70,000 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (12) Includes 100,000 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (13) Includes 200,000 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (14) Includes 8,334 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (15) Includes no shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (16) Includes 116,666 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (17) Includes 331,822 shares issuable pursuant to options exercisable within 60 days of September 15, 2013.
- (18) Includes 67,708 shares issuable pursuant to options exercisable and 33,334 shares subject to restricted stock unit awards vesting within 60 days of September 15, 2013.
- (19) Mr. Ginsburg departed the Company effective September 25, 2013.
- (20) Includes 1,184,531 shares issuable pursuant to options exercisable 33,334 shares subject to restricted stock unit awards vesting within 60 days of September 15, 2013.

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**EXECUTIVE COMPENSATION AND OTHER MATTERS**

**Compensation Discussion and Analysis**

*Executive Summary*

We promote a pay for performance compensation philosophy for our management team (including our named executive officers) by creating a compensation framework that emphasizes the following features:

**Simple compensation structure.** Target compensation for our management team in 2013 consisted primarily of base salary, performance based cash bonuses and stock option and RSU grants.

**Management bonus plan tied to straightforward financial metrics.** The Company maintains a performance based cash bonus plan, under which bonuses are tied to the achievement of Company performance targets established by the Compensation Committee at the outset of the year.

**Reasonable equity grants.** The Company generally grants stock options and RSUs to its management team with standard time based vesting, which encourages retention and stability in the management team and ties realizable compensation from such equity grants to stock price.

**Performance equity awards.** The Company's equity grants include performance awards to ensure alignment with stockholders over a multi-year period, which will only be earned by our executives if the Company achieves certain defined targets over the applicable performance period.

**No compensation guarantees.** The Company does not guarantee employment, salary increases, bonuses, pension arrangements, equity grants, or deferred compensation to its management.

**Limited perquisites.** The Company does not generally provide any benefits/perquisites to our executive officers that are not generally available to all employees. These are comprised of a 401(k) partial contribution matching program and insurance coverage. No tax gross up payments on bonuses or other payments are provided.

**Reasonable severance benefits.** Certain executive officers are party to agreements which provide severance benefits related to without cause terminations, or without cause or for good reason terminations in connection with a change-in-control transaction. The benefits under these arrangements consist of the continuation of base salary, bonus, and Cobra payments for limited time periods.

**Compensation related risk is mitigated.** The Company has adopted policies, including an insider trading policy, all of which are subject to independent Compensation Committee oversight, to mitigate compensation-related risk.

**Recoupment policy in place.** The Company has adopted a recoupment policy which under certain circumstances allows us to recover incentive based compensation paid to any current or former executive officer.

**No hedging transactions, speculative transactions or pledging of securities.** Under our insider trading policy, all employees and directors are prohibited from engaging in any speculative transactions in Company securities, including engaging in short sales, engaging in transactions in put options, call options or other derivative securities, or engaging in any other forms of hedging transactions. In addition, no employee or director may hold Extreme Networks securities in a margin account, or pledge Extreme Networks securities as collateral for a loan.

**Annual reviews by Compensation Committee.** The Company's Compensation Committee is comprised solely of independent directors. The Compensation Committee has the discretion to retain independent consultants and counsel, and it utilizes Compensia Inc. to provide guidance in conducting its annual executive compensation review.

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### ***Compensation Philosophy and Objectives***

Our guiding compensation principle is to align executive compensation with the Company's strategic objectives and financial performance. To achieve this principle we seek to provide a competitive total compensation package that allows us to attract high quality candidates for senior leadership positions, to retain these employees and to establish a total compensation program which motivates and rewards individual and team performance in alignment with our long-term business strategies and objectives. We also seek to align the interests of management and our stockholders by providing variable compensation to our executives that is directly linked to the performance of the Company and stockholder return. We believe it is in our stockholders' interests to attract, motivate and retain highly qualified individuals in critical positions by providing competitive compensation opportunities. We establish market competitive target levels of total compensation, focusing on both current pay and the opportunity for long term and future compensation. Annual compensation for a given executive is determined with reference to competitive market data, as well as the individual's experience, knowledge, skills, education, performance and importance to our business. Our compensation program is designed to motivate individual and team accountability for our absolute and relative competitive performance.

### ***2012 Say on Pay Advisory Vote on Executive Compensation***

The Company provided stockholders with an advisory vote on executive compensation for the second time at the 2012 Annual Meeting. At our 2012 Annual Meeting, approximately 94% of the votes cast in the say on pay advisory vote were FOR approval of our executive compensation. The Committee took the results of our 2012 advisory vote on executive compensation into consideration in determining whether modifications to our executive compensation programs were necessary. The Committee viewed this level of stockholder support as a vote of confidence in our compensation policies and that material changes were not required.

### ***Compensation Process***

Our Compensation Committee, in consultation with the Board and the Company's human resources group, designs, establishes and oversees the Company's compensation programs and compensation philosophy. The Committee establishes all elements of compensation paid to the Chief Executive Officer and reviews and approves all elements of compensation paid to the named executive officers and our senior officers. Throughout the year, the Chair of our Compensation Committee meets with our Vice President of Talent and Culture to monitor issues relating to executive compensation. At the end of the fiscal year, our Chief Executive Officer conducts a qualitative and quantitative assessment of each executive officer's performance for the past fiscal year based upon the officer's individual and team business goals and objectives. As set forth in additional detail below, our Chief Executive Officer and our Vice President of Talent and Culture also review the competitive benchmarking assessments of similarly situated executives in comparable companies in our industry, our competitive position relative to comparable companies in our industry, and the available salary and equity merit increase budget for the Company. Our Chief Executive Officer then makes specific recommendations to the Compensation Committee for any changes to base salary, target bonus opportunities, other cash incentives and equity awards, if appropriate. The Compensation Committee considers these proposals and makes any final approvals required in executing their duties. In addition, the Compensation Committee similarly assesses the performance of our Chief Executive Officer, based on the achievement of the approved financial goals, performance metrics, and strategic objectives identified to improve our operating performance. Our Chief Executive Officer is not present at the time the Compensation Committee reviews his performance and discusses his compensation.

### ***Compensation Consultant, Peer Group Selection and Benchmarking***

In connection with the Compensation Committee's desire to make sure our executive compensation is market based and to more closely tie future compensation to performance and to further align executive compensation with stockholder value, the Compensation Committee has engaged



Compensia, Inc., an independent compensation consultant with expertise in the technology sector, to assist it in the performance of its

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tasks and to advise it with respect to compensation matters for fiscal 2013 and beyond. The Committee routinely assigned Compensia projects designed to ensure that our executive compensation programs were reflective of companies in our peer group. Additionally, the Company's human resources team supported the work of Compensia and the Committee. In its role as independent compensation consultant, at the request of the Committee, Compensia participated in Committee meetings and provided compensation advice to the Committee. In 2013, Compensia provided advice and recommendations to the Committee on competitiveness of executive officer compensation levels, revisions and additions to the company's peer group, goal metrics and bonus design, compensation mix between cash and equity, developments in high technology compensation programs, employment contracts, legislation and regulation affecting executive compensation, the impact of the global economy on executive compensation and director compensation. Compensia also provides the Compensation Committee with guidance on the Company's equity plans, including the 2013 Equity Incentive Plan proposal. At the direction of the Committee, Compensia also periodically provides guidance to the Chief Executive Officer and the Vice President of Talent and Culture on compensation issues. Although the Company pays Compensia's fees for its engagement by the Compensation Committee, the Committee has sole discretion with respect to Compensia's continued engagement and assignments.

*Peer Group Selection and Benchmarking*

The Committee looks at a variety of factors when setting pay including the market data, including the executive's experience, the scope of the executive's role relative to the roles in the comparable data, the executive's performance and the Company's performance. Within this framework, the Committee generally seeks to ensure total compensation of our executives, including our named executive officers, is competitive with similarly-situated executives in comparable companies in our industry or at companies with whom we may compete in our hiring and retention of executives. However, the Committee does not target or benchmark compensation at any particular competitive level.

For the Compensation Committee's deliberations regarding our fiscal year 2013 executive compensation, the Compensation Committee, in consultation with Compensia, reviewed publicly disclosed market compensation data for our peer group to assist with setting compensation for our Chief Executive Office, Chief Financial Officer and select other top executives. As there is no public disclosure of specific compensation information for non-executives or for executive positions which are not generally disclosed in public filings, survey data is used to assist with setting compensation for these positions. For 2013, the following companies made up our peer group:

|                    |                       |                     |
|--------------------|-----------------------|---------------------|
| Acme Packet        | Infinera              | QAD                 |
| ADTRAN             | Ixia                  | QLogic Corporation  |
| Calix              | MRV Communications    | RadiSys Corporation |
| Digi International | Novatel Wireless      | Sonus Networks      |
| Emulex             | Oplink Communications | Symmetricon         |
| Harmonic           |                       |                     |

In April 2013, following consultation with Compensia, we revised our peer group by removing Acme Packet and QAD and adding ShorTel and Ubiquiti Networks. The peer group is comprised of computer networking and communication equipment companies and other high-tech companies with \$174 million to \$687 million in revenue and market capitalizations of \$97 million to \$2.1 billion at the time selected for inclusion in the peer group. The peer group assessment examined a range of pay levels including the 25<sup>th</sup>, 50<sup>th</sup> and 75<sup>th</sup> percentile of the applicable benchmark group to reflect a range of pay to be considered when determining individual pay elements.

**Table of Contents*****Compensation Program Elements***

The main elements of our compensation program and their respective purposes are as follows:

| <b>Element</b>  | <b>Purpose</b>   |
|---|--|
| Base salary   | Attract and retain talented employees. Serves as the primary element of fixed compensation.  |
| Annual cash incentives  | Encourage and reward individual and overall company performance relative to our current plans and objectives, particularly in the short term.  |
| Annual time and performance-based long-term equity incentives | Promote the achievement longer-term financial and strategic objectives. Encourage employee retention. Align the interests of officers and stockholders.  |
| Change in control and severance benefits                      | Retain executives during the pendency of a proposed change in control transaction. Avoid adverse impacts to the morale of executives and of uncertainty regarding continued employment. Align the interests of executives and stockholders in the event of a change in control. Assist with the recruitment of executives and other key employees. |
| Benefit plans   | Attract and retain talented employees. Provide assurance of financial support in the event of illness or injury. Encourage retirement savings. Encourage additional equity ownership by employees.   |

The Compensation Committee does not have a set formula for determining the mix of pay elements for executive officers. Other than certain change in control and severance benefits, our executives generally receive only compensation elements that are provided to our rank-and-file employees.

***2013 Compensation Decisions***

For the fiscal year ended June 30, 2013, our named executive officers and their respective titles were as follows:

| <b>Name</b>                          | <b>Title</b>  |
|--------------------------------------|---|
| <b>Charles W. Berger</b>             | <i>President and Chief Executive Officer, Director</i>        |
| <b>John Kurtzweil</b>                | <i>Senior Vice President, Chief Financial Officer</i>         |
| <b>Nancy Shemwell</b>                | <i>Executive Vice President of Global Sales</i>               |
| <b>Frank Blohm</b>                   | <i>Senior Vice President of Services, Operations and IT</i>   |
| <b>David Ginsburg<sup>(1)</sup></b>  | <i>Former Senior Vice President, Chief Marketing Officer</i>  |
| <b>Oscar Rodriguez<sup>(2)</sup></b> | <i>Former President and Chief Executive Officer, Director</i> |

(1) Mr. Ginsburg served in his position through the end of fiscal 2013 but subsequently departed from the Company effective July 29, 2013.

(2) Mr. Rodriguez resigned his employment with the Company effective April 25, 2013.

*Base Salaries*

At the beginning of the year, the Compensation Committee, together with our Chief Executive Officer, reviewed the base salaries for our continuing executive officers for the fiscal year ending June 30, 2013, though the Chief Executive Officer did not participate in discussions pertaining to his base salary. The Compensation Committee decided at that time not to make any adjustments to the base salaries of any of our named executive officers for fiscal 2013. During the fiscal year, the Compensation Committee did, however, prior to his departure decide to decrease Mr. Rodriguez's base salary to \$524,000 from \$550,000 (and to increase his target bonus opportunity to 110% of his base salary from 100%), in order to more closely tie Mr. Rodriguez's cash compensation to the Company's performance. In addition, the Compensation Committee later approved revisions

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to the compensation arrangements of Mr. Blohm, including to his base salary, in connection with his promotion to Senior Vice President of Services, Operations and IT during the fiscal year. The base salaries for each of Mr. Berger and Ms. Shemwell were agreed to during negotiations prior to their joining the Company during the fiscal year.

For additional information regarding the Compensation Committee's decisions with respect to named executive officer base salaries, including a summary of any applicable separation arrangements, see the discussion below under the heading *Summary of Employment and Other Agreements*.

### *Annual Short-Term Incentives*

Our Compensation Committee establishes an incentive plan each year, designed to reward individual and overall company performance relative to our current plans and objectives, particularly in the short term. The structure and elements of the plan are reviewed and modified annually based upon expectations for our business based on our Board-approved operating plan. In June 2012 the Compensation Committee approved the terms of our Fiscal 2013 Incentive Bonus Plan, or our 2013 Incentive Plan.

The 2013 Incentive Plan was a 100% cash bonus program that provided payouts for quarterly and annual operating periods which were to be funded and earned based on the achievement of pre-established corporate and individual objectives. All Company employees, including our named executive officers, who were not on a commission plan were eligible for the 2013 Incentive Plan. In order to participate in the 2013 Incentive Plan, participants must have been employed by us for a minimum of one full fiscal quarter and must have been employed by us, or one of our subsidiaries, on the day any awards under the 2013 Incentive Plan were made.

Under the terms of the 2013 Incentive Plan the Compensation Committee established bonus targets for our named executive officers and set the targets for officers hired or promoted during the course of the year. The individual target bonus amounts as a percentage of base salary for each of Mr. Rodriguez, Mr. Kurtzweil, Mr. Blohm and Mr. Ginsburg, were 100% (changed to 110% during the year), 50%, 50%, and 50%, respectively. Mr. Berger, who was not employed for a minimum of a full quarter during the fiscal year, and Ms. Shemwell, who participated in an individual sales commission plan were not eligible to participate in the 2013 Incentive Plan. The maximum payout a participant was eligible to receive was to be calculated based upon 150% of the participant's target bonus. Based upon achievement of the performance goals, the target award opportunity was 15% per quarter for meeting quarterly targets and 40% for meeting the annual target. Employees were eligible for payments on a quarterly basis, while executives were eligible for payments on a semi-annual basis.

The Compensation Committee does not adhere to a strict formula in determining performance goals. Instead, the Committee employs a flexible approach that enables it to choose performance metrics that are specifically designed to allow the company to adjust to evolving market conditions. For 2013, the Compensation Committee adopted performance goals based on achievement of operating income percentage and revenue, weighted 60% and 40%, respectively. The 2013 Incentive Plan was structured to payout at the 100% level if the Company achieved 9% operating income for the respective measurement periods at revenue targets based on the annual operating plan, subject to adjustment downward and upward based on actual performance.

During the year, the Compensation Committee amended the 2013 Incentive Plan for the third and fourth quarters such that the lone performance target would be the achievement of 10% operating income. No awards would be earned until operating income percentage reached 10%, following which, all incremental operating income dollars above the 10% threshold would fund the quarterly bonus pool up to a target payout equal to 100% for the applicable period. Once the 100% award level was reached, 50% of the incremental operating income dollars above the 10% threshold would fund the quarterly bonus pool up to the 150% maximum. The Compensation Committee included a catch-up provision

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such that if third quarter bonus, if any, was not funded at the 100% level, and fourth quarter performance resulted in payment of the full bonus award, with accelerators, capped at 150%, any incremental operating income dollars above the 10% threshold for the fourth quarter would be used to recoup the third quarter bonus on the same 100%/50% levels described above.

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In August 2013, following completion of fiscal 2013 and based on the Company's overall performance, the Compensation Committee approved a discretionary payout to all participants, including named executive officers, under the 2013 Incentive Plan. As a result, our eligible named executive officers earned the following awards for fiscal 2013 which were paid in fiscal 2014:

|   | <b>Non-Equity<br/>Incentive<br/>Plan<br/>Payment</b> |
|---|--|
| <b>Executive<br/>John Kurtzweil</b>   |  |
| <i>Senior Vice President, Chief Financial Officer</i><br><b>Frank Blohm</b> | \$ 28,397.96   |
| <i>Senior Vice President of Services, Operations and IT</i>                 | \$ 22,128.28   |
| <i>Sales Commission Plan</i>  |  |

Ms. Shemwell did not participate in our 2013 Incentive Plan, but instead participated in a separate sales incentive plan. For 2013, Ms. Shemwell was given a target total incentive of 50% of her base salary, or \$162,500, based on total revenue. A table of revenue attainment and incentive potential was used to make the plan easy to understand and to directly tie Ms. Shemwell's compensation to our success. Because our management wanted to incentivize Ms. Shemwell to maximize sales of our products and services and thereby maximize her own compensation, the maximum amount established for Ms. Shemwell's sales incentive plan was capped at 150% of her base salary. In February 2013, the Compensation Committee adjusted the revenue levels in Ms. Shemwell's sales incentive plan, but the target incentive payments were left unchanged.

*Special One-Time Cash Bonus to Mr. Blohm*

Based on Mr. Blohm's outstanding individual performance for fiscal 2013, the Compensation Committee awarded a special one-time cash bonus to Mr. Blohm in an amount of \$55,000. The bonus was paid to Mr. Blohm in September 2013.

*Sign-on Bonuses Granted to Mr. Berger and Ms. Shemwell*

In connection with the negotiation of their respective terms of employment, Mr. Berger negotiated for a sign-on bonus of \$125,000, which was paid in a lump sum in August 2013, when other Company employee bonuses were paid, and Ms. Shemwell negotiated for a sign-on bonus of \$25,000, which was paid in September 2013 following the first anniversary of her employment with the Company.

*Long-Term Equity Incentive Compensation*

We grant equity awards under our equity incentive plans to our executive officers in order to promote the achievement of longer-term financial and strategic objectives, to encourage employee retention and to align the interests of our officers and of our stockholders. Under our 2005 Equity Incentive Plan, or the 2005 Plan, we may grant stock options, stock appreciation rights, restricted stock, RSUs, performance shares, performance units, and other share-based or cash-based awards to employees and consultants. The 2005 Plan also authorizes the grant of awards of stock options, stock appreciation rights, or SARs, restricted stock, and RSUs to non-employee members of our Board and deferred compensation awards to officers, directors and certain management or highly compensated employees. Under the 2005 Plan, all stock options must be granted with an exercise price per share that is not less than the fair market value of a share of our common stock on the effective date of grant of the option. The 2005 Plan replaced the 1996 Stock Option Plan, the 2000 Nonstatutory Stock Option Plan, and the 2001 Nonstatutory Stock Option Plan. As of June 30, 2013, 3,615,342 shares were available for future grant under the 2005 Plan. To further align the interests of our executive officers with those of our stockholders we grant performance awards which vest over multiple years and which will only be earned by our executives if the Company achieves certain defined targets over the applicable performance period.



**Table of Contents***New Hire Grants; Promotional Grants*

Generally, we grant equity awards to our new employees, including our named executive officers, in connection with the start of their employment in order to induce them to join us and to tie their long term compensation to future increases in our stock price. We occasionally grant additional equity awards in connection with the promotion of employees as a reward for outstanding past performance and to provide incentives resulting from future stock gains. New-hire stock options granted to named executive officers generally vest as follows: one-fourth vests one year after the officer's employment start date, and the remaining shares vest monthly over the following three years at a rate of 1/48th of the entire option each month, subject to the officer's continued employment with us. Promotional stock options granted to named executive officers generally vest monthly over the four years following the date of grant at a rate of 1/48th of the entire option each month, subject to the officer's continued employment with us. However, our Board or the Compensation Committee has approved certain exceptions to vesting schedules for new-hire and promotional equity awards in the past. For example, see *Change in Control and Severance Agreements*, below. The aggregate amounts of the new-hire or promotional grants to named executive officer are negotiated with the named executive officer.

The following table sets forth information on new-hire or promotional grants to named executive officers in fiscal year 2013:

| <b>Executive</b>  | <b>Equity Award Grant Date</b> | <b>Number of Shares Subject to Stock Option Grant</b> | <b>Number of Shares Subject to RSU Grant</b> |
|---|--------------------------------|---|--|
| <b>Charles W. Berger</b><br><i>President and Chief Executive Officer</i>          | May 2, 2013                    | 1,800,000 <sup>(1)</sup>                              |  |
| <b>John Kurtzweil</b><br><i>Senior Vice President, Chief Financial Officer</i>    | August 21, 2012                | 350,000   | 40,000                                       |
| <b>Nancy Shemwell</b><br><i>Executive Vice President of Global Sales</i>          | November 2, 2012               | 250,000   | 100,000                                      |
| <b>Frank Blohm</b><br><i>Senior Vice President of Services, Operations and IT</i> | August 21, 2012                | 100,000   | 75,000                                       |

(1) 900,000 options are subject to the achievement of certain performance metrics tied to performance of our common stock. Once earned, performance awards will vest over a two year period in equal monthly installments.

*Annual Merit Grants*

We have typically granted our executive officers additional stock option, RSU and/or performance grants on an annual basis, with the goal of more closely aligning the interests of management and our stockholders by providing continued incentives to our officers in order to retain strong executives and improve corporate performance. Only executives with positive performance rankings are eligible for annual merit grants. Merit based annual stock options granted to named executive officers generally vest monthly over the four years following the date of grant at a rate of 1/48<sup>th</sup> of the entire option each month, subject to the officer's continued employment with us. Merit based RSU grants generally vest over a two or three year period, with equal installments vesting on the anniversary date of each grant, subject to the officer's continued employment with us. PSUs will vest upon achievement of specific performance metrics over a defined performance period, each as selected by the Compensation Committee. However, our Board and/or the Compensation Committee has approved certain exceptions to vesting schedules in the past.



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During the fiscal year, the Compensation Committee evaluated the performance of each of our named executive officers and, decided to grant merit based stock options, RSUs and/or performance grants to certain of our executive officers. The following table sets forth information on merit based and performance grants to named executive officers in fiscal year 2013:

| <b>Executive</b>   | <b>Equity Award Grant Date</b> | <b>Number of Shares Subject to Stock Option Grant</b> | <b>Number of Shares Subject to RSU/ PSU Grant</b> |
|--|--------------------------------|---|---|
| <b>John Kurtzweil</b>  |                                |   |   |
| <i>Senior Vice President, Chief Financial Officer</i>        | November 2, 2012               |   | 65,000 <sup>(1)</sup>                             |
| <b>Nancy Shemwell</b>  | November 2, 2012               |   | 50,000 <sup>(1)</sup>                             |
| <i>Executive Vice President of Global Sales</i>              | May 2, 2013                    |   | 20,504 <sup>(2)</sup>                             |
| <b>Frank Blohm</b>   | August 21, 2012                |   | 5,532 <sup>(3)</sup>                              |
| <i>Senior Vice President of Services, Operations and IT</i>  | November 2, 2012               |   | 65,000 <sup>(1)</sup>                             |
| <b>David Ginsburg</b>  |                                | 60,000 <sup>(2)</sup>                                 | 10,000 <sup>(2)</sup>                             |
| <i>Former Senior Vice President, Chief Marketing Officer</i> | July 27, 2012                  | 55,000 <sup>(2)</sup>                                 | 7,418 <sup>(3)</sup>                              |
|  | August 21, 2012                |   | 30,000 <sup>(2)</sup>                             |
|  | November 2, 2012               |   | 65,000 <sup>(1)</sup>                             |
| <b>Oscar Rodriguez</b>                                       |                                | 218,000 <sup>(2)</sup>                                | 14,644 <sup>(3)</sup>                             |
| <i>Former President and Chief Executive Officer</i>          | August 21, 2012                |   | 115,000 <sup>(2)</sup>                            |
|  | November 2, 2012               |   | 183,000 <sup>(1)</sup>                            |

(1) Performance based RSU subject to the achievement of performance metrics determined by the Compensation Committee

(2) Merit award subject to standard vesting

(3) Award made in fiscal 2013 pursuant to out 2012 Annual Incentive Plan subject to standard vesting

Our process with regard to grants of equity compensation awards to Board members, officers, and non-officer employees is as follows:

The general practice for equity awards is to make grants once per quarter, during open trading windows only, on the second trading day following the public announcement of quarterly financial results, pursuant to a list to be circulated to the appropriate granting authority prior to the proposed approval date.

All grants are to be approved by the Compensation Committee.

Grants are to be approved at Compensation Committee meetings (not by unanimous written consent, except in extraordinary circumstances).

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Granting authority may not be delegated to management.

Our Board and management are to continue monitoring processes and policies recommended by the SEC, self-regulatory authorities and outside advisors.

All Board and Compensation Committee minutes are to be circulated to the directors as soon as reasonably practicable (generally, within two weeks of meeting). Counsel should attend all Board and Compensation Committee meetings, and must be present when stock is granted.

Management has instituted a mechanism for monitoring compliance with and reporting to our Board on our policies and procedures relating to options grants.

These processes are designed to ensure that we continue to employ best practices and procedures with respect to equity compensation awards.

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In addition, we monitor the number of shares that we are utilizing for all of our equity compensation programs, including new hire grants, promotional grants and annual merit grants, in order to prudently manage stock option expense and potential dilution of stockholder ownership. The Compensation Committee in consultation with our compensation consultant approved a target gross equity pool that could be used for all grants issued to new hires, promotion grants and merit grants, and to reflect industry practices for managing the overall stock option burn rate.

### *Change in Control and Severance Agreements*

Each of our named executive officers is employed at-will. However, from time to time, we implement plans or enter into agreements that would provide benefits payable to certain employees, including named executive officers, in connection with the termination of employment, a change in our control or other situations. These benefits assist us in our recruiting efforts and, without these benefits, officers may be tempted to leave us prior to the closing of the change in control, especially if they do not wish to remain with or believe they will not be retained by the entity after the transaction closes, and any departures could jeopardize the consummation of the transaction or our interests if the transaction does not close. The Compensation Committee believes that these benefits therefore serve to enhance stockholder value, and align the officers' interest with those of our stockholders.

Our agreements with named executive officers are described under *Summary of Employment and Other Agreements* below. The potential payments that each of named executive officer would have received if a change in control or termination of employment had occurred on June 30, 2013 are set forth under *Potential Payments Upon Termination or Change in Control* below.

### *Other Benefits*

We provide other customary benefits that are comprehensive and apply uniformly to all of our employees, including our named executive officers. Our employee benefits program includes medical, dental, prescription drug, flexible spending contribution plans, vision care, disability insurance, life insurance benefits, business travel insurance, 401(k) savings plan with employer match, educational assistance, employee assistance program and holidays. We do not include a fixed vacation allowance for named executive officers, as they typically travel extensively and are requested to be available to us even while vacationing. We do not provide a defined benefit retirement pension plan, supplemental life insurance or the use of company vehicles to our named executive officers.

In January 1999, our Board adopted our 1999 Employee Stock Purchase Plan, or the Purchase Plan. In December 2005, our stockholders approved an amendment to the Purchase Plan to increase the maximum number of shares of common stock that may be issued under the plan by 5,000,000 to a total of 12,000,000 shares. The Purchase Plan permits eligible employees, including our named executive officers, to acquire shares of our common stock through periodic payroll deductions of up to 15% of total compensation. No more than 1,000 shares may be purchased on any purchase date per employee, and each offering period currently has a maximum duration of 3 months. The price at which the common stock may be purchased is 85% of the lesser of the fair market value of our common stock on the first day of the applicable offering period or on the last day of the respective purchase period.

### *Tax Considerations*

The Compensation Committee has considered the provisions of Section 162(m) of the Internal Revenue Code, or the Code, and related Treasury Department regulations, which restrict deductibility of executive compensation paid to our named executive officers holding office at the end of

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any year to the extent this compensation exceeds \$1,000,000 for any of these officers in any year and does not qualify for an exception under the statute or regulations. Income from options granted under our stockholder-approved stock option plan

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would generally qualify for an exemption from these restrictions so long as the options are granted by a committee whose members are outside directors (as defined by Section 162(m)) and have an exercise price no less than the fair market value of the shares on the date of grant. We expect that the Compensation Committee will continue to be comprised solely of outside directors, and that any options granted to our executive officers will be approved by the Compensation Committee. The other components of our executive compensation program may not qualify for exemptions from Section 162(m). In the future, the Compensation Committee expects to continue evaluating the advisability of qualifying our executive compensation for deductibility. The Compensation Committee's policy is to qualify its executive compensation for deductibility under applicable tax laws where reasonably practicable and consistent with the Company's compensation goals and objectives.

### ***Compensation Risk Evaluation***

At the direction of our Compensation Committee management reviews and reports to the Compensation Committee on its assessment regarding elements of our compensation program that could pose a risk to the Company. Management reported to the Compensation Committee its determination that the Company's executive compensation program does not encourage excessive risk or unnecessary risk taking due to factors such as our programs are composed of fixed and variable pay components, the balance of short-term and long-term performance goals in our incentive compensation system, the established limits on permissible incentive award levels and generally applicable internal controls, including financial, operational and compliance policies and practices.

### ***Stock Ownership, Hedging and Pledging***

At present, the Compensation Committee has not established any equity or security ownership requirements for its executive officers or directors which is a policy that is reviewed annually as part of the regular review of our pay plans. Under our insider trading policy, we prohibit all employees and directors from hedging the economic risk of ownership of our stock. In addition, employees and directors may not hold Extreme Networks securities in a margin account, or pledge Extreme Networks securities as collateral.

### ***Recoupment Policy***

The Compensation Committee has adopted the Extreme Networks, Inc. recoupment policy that applies to all of our current and former executive officers within the meaning of the Securities Exchange Act. Under this policy, in the event of a restatement of financial results (other than a voluntary restatement due to a change in applicable accounting rules or interpretations) due to the material noncompliance of the Company with any financial reporting requirement under the U.S. federal securities laws due to fraud during the one-year period following the date of the first public issuance or filing with the SEC (whichever first occurs), the Compensation Committee will have the right to use reasonable efforts to recover any incentive based compensation in excess of the amount of such incentive based compensation that would have been earned and paid to the executive officer under the restated financial results.

The Compensation Committee will have the discretion to determine the manner in which a recovery of excess incentive based compensation will be effected, for example, by reducing the future payment of excess incentive based compensation earned on the basis of an erroneous financial measure but not yet paid or by reducing payment of other future compensation to offset excess incentive based compensation previously paid. The Compensation Committee will amend the policy, as necessary, to comply with the final SEC rules regarding the recoupment policies of the Dodd-Frank Wall Street Reform and Consumer Protection Act.





**Table of Contents****Summary Compensation Table**

The following table sets forth information for fiscal year 2013 concerning the compensation of our named executive officers:

**SUMMARY COMPENSATION TABLE**

| Name and Principal Position  | Year | Salary<br>(\$) | Bonus<br>(\$) <sup>(1)</sup> | Stock<br>Awards<br>(\$) <sup>(2)</sup> | Option<br>Awards<br>(\$) | Other<br>Equity<br>And<br>Non-Equity<br>Incentive<br>Plan | All Other                           | Total<br>(\$) |
|--|------|----------------|------------------------------|--|--------------------------|---|-------------------------------------|---------------|
|  |      |                |                              |  |                          | Compensation<br>(\$) <sup>(3)</sup>                       | Compensation<br>(\$) <sup>(4)</sup> |               |
| <b>Charles W. Berger</b><br><i>President and Chief Executive Officer</i>                             | 2013 | 91,025         | 125,000                      |  | 2,846,459                |   | 11,845                              | 3,074,329     |
| <b>John Kurtzweil</b><br><i>Senior Vice President and Chief<br/>Financial Officer</i>                | 2013 | 385,000        |                              | 135,200                                | 652,575                  |   | 16,026                              | 1,188,801     |
|  | 2012 | 1,481          |                              |  |                          |   |                                     | 1,481         |
| <b>Nancy Shemwell</b><br><i>Executive Vice President of Global Sales</i>                             | 2013 | 251,041        | 25,000                       | 418,997                                | 485,925                  | 39,999  | 5,723                               | 1,226,685     |
| <b>Frank Blohm</b><br><i>Senior Vice President of Services,<br/>Operations and IT</i>                | 2013 | 296,875        |                              | 272,198                                | 186,450                  | 18,700  | 15,193                              | 789,416       |
| <b>David Ginsburg</b> <sup>(5)</sup><br><i>Senior Vice President and<br/>Chief Marketing Officer</i> | 2013 | 295,000        |                              | 164,272                                | 209,821                  | 25,075  | 3,035                               | 697,203       |
|  | 2012 | 295,000        |                              |  |                          |   | 270                                 | 295,270       |
|  | 2011 | 174,352        |                              |  | 740,640                  | 184,000   | 1,358                               | 1,100,350     |
| <b>Oscar Rodriguez</b> <sup>(6)</sup><br><i>Former President and<br/>Chief Executive Officer</i>     | 2013 | 440,605        |                              | 456,596                                | 423,726                  | 49,500  | 1,403,134 <sup>(7)</sup>            | 2,332,956     |
|  | 2012 | 550,000        |                              | 263,000                                | 997,860                  |   | 21,044                              | 1,831,904     |
|  | 2011 | 473,140        |                              | 454,500                                | 1,249,560                | 886,435   | 97,714                              | 3,161,349     |

(1) Bonus amounts represent discretionary fixed bonuses, including sign-on bonuses. Performance-based bonuses are generally paid under our equity incentive plans and sales commission plan and represented as Non-Equity Incentive Plan Compensation.

(2) Represents the aggregate grant date fair value computed in accordance with Accounting Standards Codification, or ASC, Topic 718, and do not reflect whether our named executive officer has actually realized a financial benefit from the award. For information on the assumptions used to calculate the value of the awards, refer to Note 5 to our consolidated financial statements in our Form 10-K for the fiscal year ended June 30, 2013. In accordance with SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.

(3) Represents awards under our incentive plans, including sales commission plans. Does not include performance based equity awards as at this time the performance metrics are not expected to be achieved.

(4) Comprised of contributions to group term life insurance, employer sponsored health benefits and other miscellaneous items.

(5) Mr. Ginsburg served in this position through the end of fiscal 2013 but subsequently departed from the Company effective July 29, 2013.

(6) Mr. Rodriguez resigned his employment with the Company effective April 25, 2013.

(7) Includes \$524,000 for severance payments to Mr. Rodriguez and \$480,334 for the pro rata amount of Mr. Rodriguez's target bonus following his resignation from the Company.

**Summary of Employment and Other Agreements**

The following is a description of employment and other agreements between us and our named executive officers.

**Table of Contents*****President and Chief Executive Officer***

In April 2012, we entered into an offer letter of employment with Mr. Berger for service as our President and Chief Executive Officer. Pursuant to the offer letter of employment, Mr. Berger is to receive an annual salary of \$500,000, less applicable taxes and withholdings, and is eligible to participate in our standard employee benefits plans, including our annual incentive plan with a target of 100% of his annual base salary. Mr. Berger was granted a one-time option to acquire 900,000 shares of our common stock with an exercise price equal to the closing price of our common stock on the grant date. One-fourth of these shares vest one year after the commencement of Mr. Berger's employment with us, and the remaining shares vest monthly over the following three years at a rate of 1/48<sup>th</sup> of the entire option each month, subject to Mr. Berger's continued employment with us. In addition, Mr. Berger received a performance option award (the "Performance Option") which was a one-time option to acquire 900,000 additional shares of our common stock with an exercise price equal to the closing price of our common stock on the grant date. One-third of the shares subject to the Performance Option will be earned, if at all, once the Company's common stock has traded publicly after April 25, 2013 for at least 30 consecutive trading days at a target closing price per share as reported on the NASDAQ Global Select Market of at least \$4; an additional one-third of the shares subject to the Performance Option will be Performance Earned, if at all, once the Company's common stock has traded publicly after April 25, 2013 for at least 30 consecutive trading days at a target closing price per share as reported on the NASDAQ Global Select Market of at least \$5; and all shares subject to the Performance Option will be Performance Earned, if at all, upon the Company's common stock trading publicly after April 25, 2013 for at least 30 consecutive trading days at a target closing price per share as reported on the NASDAQ Global Select Market of at least \$6. Once earned, the shares subject to the Performance Option will vest over two years, at a rate of 1/24<sup>th</sup> of the earned portion of the Performance Option for each month following the date on which such shares were earned, subject to Mr. Berger's continued employment with us. The vesting of the shares subject to this option may be accelerated upon a change in control, pursuant to the terms and conditions described below under the Executive Change in Control Severance Plan. Mr. Berger was also entitled to a one-time, sign-on bonus in the amount of \$125,000, less applicable taxes and withholdings, which was paid in a lump sum in August 2013, when other Company employee bonuses were paid.

In addition, pursuant to the terms of Mr. Berger's offer letter, Mr. Berger would be entitled to receive certain benefits in the event of the termination of his employment from the Company in certain circumstances, including certain conditions of a change of control, termination without cause or a resignation for "good reason" as such terms are described in his offer letter agreements. Such benefits include, but are not limited to, a lump sum payment equal to (i) 18 months of his base salary, less applicable withholding taxes, in certain circumstances involving a change of control or (ii) 12 months of his base salary, less applicable withholding taxes, in certain circumstances involving the Company's termination of Mr. Berger employment without cause. Defined terms with respect to change of control and severance benefits generally have the same definitions as ascribed in the Executive Change in Control Severance Plan.

***Senior Vice President and Chief Financial Officer***

In May 2012, we entered into an offer letter of employment with Mr. Kurtzweil for service as our Senior Vice President and Chief Executive Officer. Pursuant to the terms the offer letter of employment, Mr. Kurtzweil is to receive an annual salary of \$385,000, less applicable taxes and withholdings and will be eligible to participate in our standard employee benefits plans, including our annual incentive plan with a target of 50% of his annual base salary. In addition, Mr. Kurtzweil was granted a one-time option to acquire 350,000 shares of our common stock with an exercise price equal to the closing price of our common stock on the grant date. One-fourth of these shares vest one year after the commencement of Mr. Kurtzweil's employment with us, and the remaining shares vest monthly over the following three years at a rate of 1/48<sup>th</sup> of the entire option each month, subject to Mr. Kurtzweil's continued employment with us. Mr. Kurtzweil was also granted 40,000 shares of restricted stock that vest in three annual installments, subject to his continued employment with us.

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In addition, we entered into an Executive Change in Control Severance Agreement with Mr. Kurtzweil in the form standard for our executive officers under which Mr. Kurtzweil would be entitled to a severance benefit period of 12 months. In addition, under his employment agreement, should Mr. Kurtzweil employment be terminated by the Company other than for Cause, he is entitled to receive a payment equal to 12 months of his salary as of the date of termination, a payment equal to the pro rata portion of his target bonus through his date of termination, and the continuation of medical benefits for 12 months, as further described in his offer letter.

### ***Executive Vice President of Global Sales***

In September 2012, we entered into an offer letter of employment with Ms. Shemwell as our Executive Vice President of Global Sales. Pursuant to the terms the offer letter of employment, Ms. Shemwell is to receive an annual salary of \$325,000, less applicable taxes and withholdings. Ms. Shemwell will also be eligible to participate in an annual sales compensation plan with a target of 50% of her base salary, for total targeted annual earnings of \$487,500 (less applicable taxes and withholdings). Ms. Shemwell will participate in our standard employee benefits plans. In addition, Ms. Shemwell was granted a one-time option to acquire 250,000 shares of our common stock with an exercise price equal to the closing price of our common stock on the grant date. One-fourth of these shares vest one year after the commencement of Ms. Shemwell's employment with us, and the remaining shares vest monthly over the following three years at a rate of 1/48th of the entire option each month, subject to Ms. Shemwell's continued employment with us. Ms. Shemwell was also granted 100,000 shares of restricted stock that vest in three annual installments, subject to his continued employment with us. Ms. Shemwell also received the offer of a one-time cash payment of \$25,000, less applicable taxes and withholdings, which was paid in September 2013 following the first anniversary of her employment with the Company.

In addition, we entered into an Executive Change in Control Severance Agreement with Ms. Shemwell in the form standard for our executive officers under which Ms. Shemwell would be entitled to a severance benefit period of 12 months.

### ***Senior Vice President of Services, Operations and IT***

In September 2002, we entered into an offer letter Mr. Blohm as our Senior Director of Procurement. Mr. Blohm's terms of employment have changed over the past 11 years, during which we have not entered into a new agreement with Mr. Blohm. In addition, we entered into an Executive Change in Control Severance Agreement with Mr. Blohm in the form standard for our executive officers under which Mr. Blohm would be entitled to a severance benefit period of 12 months.

### ***Former President and Chief Executive Officer***

In connection with his resignation from the Company effective April 25, 2013, we entered into a general release of claims with Mr. Rodriguez under which he received a lump sum payment equal to 12 months of his current salary, \$524,000, a payment equal to the pro rata portion of his target bonus through April 25, 2013, \$480,334, which was paid to him in August 2013 when other target bonuses for fiscal 2013 were paid, up to 12 months of COBRA continuation coverage payment reimbursement (provided he elects and remains eligible for COBRA) and acceleration of vesting equal to 12 months of his unvested stock options and restricted stock units.

### ***Former Senior Vice President, Chief Marketing Officer***

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In connection with his departure from the Company effective July 29, 2013, we entered into a general release of claims with Mr. Ginsburg under which he received a lump sum cash payment of \$147,500, six months of COBRA premiums and the acceleration of vesting of 25,000 restricted stock units subject to a performance award granted Mr. Ginsburg.

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### ***Executive Change in Control Severance Plan***

On February 8, 2006, the independent members of our Board, upon the recommendation of the Compensation Committee, approved the terms of an Executive Change in Control Severance Plan in order to ensure retention of key personnel and continuity of the business in the event of a change in control of the business. On August 7, 2008, the independent members of our Board, upon the recommendation of the Compensation Committee, approved an amendment and restatement of the Executive Change in Control Severance Plan. We refer to this plan, as amended and restated, as the Severance Plan. Any severance and change of control payments which may be due Mr. Berger are covered by his offer letter of employment and not the Severance Plan.

### ***Cash Compensation and Benefits***

Under the Severance Plan, severance compensation, health care and other benefits are provided to a Severance Plan participant if the participant is terminated without cause or resigns as a result of certain adverse circumstances described in the Severance Plan within 12 months after a change in control. The amount of this severance compensation that would be provided to a participant is equal to that participant's then current salary and target bonus for the applicable severance benefit period. The Compensation Committee has established that the severance benefit period for participants is 18 months in the case of the Chief Executive Officer, 12 months in the case of Section 16 Officers and vice presidents who report directly to the Chief Executive Officer and 6 months in the case of eligible vice presidents designated by the Compensation Committee. In addition, the severance benefit period establishes the period of time during which health care and other benefits are provided to a participant.

### ***Equity Awards***

The Severance Plan also provides that equity awards granted prior to August 7, 2008 (the effective date of the amendment to the plan) with respect to individuals who were participants as of that date and certain other equity awards as determined by the Compensation Committee at the time of grant are treated as follows in the event of a Change in our Control:

if the participant's options and SARs are not assumed or otherwise continued by an acquirer, 100% of the participant's then unvested options and SARs would accelerate;

if the participant is not terminated and an acquirer assumes the participant's outstanding options and SARs, the vesting of fifty percent (50%) of the participant's then unvested options and SARs would accelerate as of the date of the change in control and the remainder of the participant's unvested options and SARs would vest in equal monthly installments over a period equal to one half of the remainder of the participant's original vesting schedule;

if the participant is terminated and the participant's options and SARs are assumed or otherwise continued by an acquirer, 100% of the participant's then unvested options and SARs would accelerate; and

the vesting of all other awards, including restricted stock and RSUs, would accelerate.

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However, the Severance Plan further provides that, unless otherwise determined by the Compensation Committee at the time of grant, equity awards granted after August 7, 2008 (the effective date of the amendment to the plan) to participants are treated as follows in the event of a Change in our Control:

if equity awards are not assumed or otherwise continued by an acquirer, accelerated vesting would occur only with respect to the number of months in the applicable participant's severance benefit period; and

if equity awards are assumed or otherwise continued by an acquirer, acceleration of vesting of these awards would occur only upon a Double Trigger Termination (as defined in the plan), and then would accelerate 100%;

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In the event that any payment or benefit received or to be received by a participant under the Severance Plan or otherwise would subject the participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such payments as an excess parachute payment under Section 280G of the Code, then, notwithstanding the other provisions of the Severance Plan, the amount of such payments would not exceed the amount which produces the greatest after-tax benefit to the participant. The Severance Plan does not provide for payment of any applicable excise tax by us or other gross-up payments to offset the impact of any applicable excise tax.

### *Certain Definitions*

For purposes of the Severance Plan, the following definitions apply:

*Cause* means the occurrence of any of the following: (i) the participant's theft, dishonesty, misconduct, breach of fiduciary duty for personal profit, or falsification of any our documents or records; (ii) the participant's material failure to abide by our code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (3) misconduct by the participant within the scope of Section 304 of the Sarbanes-Oxley Act of 2002 as a result of which of we are required to prepare an accounting restatement; (4) the participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of ours (including, without limitation, the participant's improper use or disclosure of our confidential or proprietary information); (5) any intentional act by the participant which has a material detrimental effect on our reputation or business; (6) the participant's repeated failure or inability to perform any reasonable assigned duties after written notice from us of, and a reasonable opportunity to cure, such failure or inability; (7) any material breach by the participant of any employment, non-disclosure, non-competition, non-solicitation or other similar agreement between the participant and us, which breach is not cured pursuant to the terms of such agreement; or (8) the participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the participant's ability to perform his or her duties with us.

*Change in our Control* means the occurrence of any of the following:

any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act, other than a trustee or other fiduciary holding our securities under an employee benefit plan, becomes the beneficial owner (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of our securities representing more than fifty percent (50%) of the total combined voting power of our then-outstanding securities entitled to vote generally in the election of directors;

we are party to a merger or consolidation which results in the holders of our voting securities outstanding immediately prior thereto failing to retain immediately after such merger or consolidation direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the securities entitled to vote generally in the election of our directors or the surviving entity outstanding immediately after such merger or consolidation;

the sale or disposition of all or substantially all of our assets or consummation of any transaction having similar effect (other than a sale or disposition to one or more of our subsidiaries); or

a change in the composition of our Board within any twelve (12) month period as a result of which fewer than a majority of the directors are Incumbent Directors (defined as a director who either (i) is a member of our Board as of February 8, 2006, or (ii) is elected, or nominated for election, to our Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination, but (iii) was not elected or nominated in connection with an actual or threatened proxy contest relating to the election of our directors).





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However, to the extent that any amount constituting nonqualified deferred compensation subject to Section 409A of the Code would become payable under the Severance Plan by reason of a Change in our Control, such amount shall become payable only if the event constituting a Change in our Control would also constitute a change in ownership or effective control of us, or a change in the ownership of a substantial portion of our assets, within the meaning of Section 409A of the Code.

**Indemnity Agreements**

We have entered into indemnification agreements with our executive officers and directors. These indemnification agreements require us to indemnify these individuals to the fullest extent permitted by law.

**Grants of Plan-Based Awards**

The following table sets forth certain information with respect to stock and option awards and other plan-based awards, including non-equity incentive awards, granted during the fiscal year ended June 30, 2013 to our named executive officers. For a narrative description of the various plan-based awards set forth in the following table, see the discussion above under the heading *Compensation Discussion and Analysis*.

| Name                          | Grant Date | Approval Date | Estimated Future Payouts<br>Under Non-Equity Incentive<br>Plan Awards <sup>(1)</sup> |                |                                | All<br>Other<br>Stock<br>Awards:<br>Number<br>of Shares<br>Of Stock<br>Or Units<br>(#) | All<br>Other<br>Option<br>Awards:<br>Number<br>of<br>Securities<br>Underlying<br>Options<br>(#) | Exercise<br>or<br>Base<br>Price<br>of<br>Option<br>Awards<br>(\$/Sh) | Grant<br>Date Fair<br>Value of<br>Stock<br>and<br>Option<br>Awards <sup>(3)</sup><br>(\$) |
|-------------------------------|------------|---------------|--|----------------|--------------------------------|--|---|--|---|
|                               |            |               | Threshold<br>(\$)  | Target<br>(\$) | Maximum <sup>(2)</sup><br>(\$) |  |   |  |   |
| Charles W. Berger             | 05/02/2013 | 05/02/2013    |  |                |                                |  | 900,000   | 3.17   | 1,566,810   |
|                               |            |               |  |                |                                |  | 900,000   | 3.17   | 1,279,649   |
| John Kurtzweil                | 06/28/2012 | 06/28/2012    | 94,325   | 192,500        | 288,750                        |  | 350,000   | 3.38   | 652,575   |
|                               | 08/21/2012 | 08/21/2012    |  |                |                                | 40,000   |   | 3.38   | 135,200   |
|                               | 08/21/2012 | 08/21/2012    |  |                |                                | 65,000   |   | 3.54   | 230,100 <sup>(7)</sup>  |
| Nancy Shemwell <sup>(4)</sup> | 09/24/2012 | 09/24/2012    | 16,250   | 162,500        | 243,750                        |  | 250,000   | 3.54   | 485,925   |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                |  | 250,000   | 3.54   | 485,925   |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                | 100,000  |   | 3.54   | 354,000   |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                | 50,000   |   | 3.54   | 177,000 <sup>(7)</sup>  |
|                               | 05/02/2013 | 05/02/2013    |  |                |                                | 20,504   |   | 3.17   | 64,998  |
| Frank Blohm                   | 06/28/2012 | 06/28/2012    | 73,500   | 150,000        | 225,000                        |  | 100,000   | 3.38   | 186,450   |
|                               | 08/21/2012 | 08/21/2012    |  |                |                                |  | 100,000   | 3.38   | 186,450   |
|                               | 08/21/2012 | 08/21/2012    |  |                |                                | 80,532   |   | 3.38   | 272,198   |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                | 65,000   |   | 3.54   | 230,100 <sup>(7)</sup>  |
| David Ginsburg <sup>(5)</sup> | 06/28/2012 | 06/28/2012    | 72,275   | 147,500        | 221,250                        |  |   |  |   |
|                               | 07/27/2012 | 07/27/2012    |  |                |                                |  | 60,000  | 3.30   | 102,918   |
|                               | 07/27/2012 | 07/27/2012    |  |                |                                | 10,000   |   | 3.30   | 33,000  |
|                               | 08/21/2012 | 08/21/2012    |  |                |                                | 7,418  |   | 3.38   | 25,073  |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                |  | 55,000  | 3.54   | 106,904   |
|                               | 11/02/2012 | 11/02/2012    |  |                |                                | 30,000   |   | 3.54   | 106,200   |

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|                                       |            |            |         |         |         |         |         |      |                  |
|---------------------------------------|------------|------------|---------|---------|---------|---------|---------|------|------------------|
| <b>Oscar Rodriguez</b> <sup>(6)</sup> | 11/02/2012 | 11/02/2012 |         |         |         | 65,000  |         | 3.54 | 0 <sup>(8)</sup> |
|                                       | 06/28/2012 | 06/28/2012 | 282,436 | 576,400 | 864,600 |         |         |      |                  |
|                                       | 08/21/2012 | 08/21/2012 |         |         |         | 14,644  |         | 3.38 | 49,497           |
|                                       | 11/02/2012 | 11/02/2012 |         |         |         |         | 218,000 | 3.54 | 423,727          |
|                                       | 11/02/2012 | 11/02/2012 |         |         |         | 115,000 |         | 3.54 | 407,100          |
|                                       | 11/02/2012 | 11/02/2012 |         |         |         | 183,000 |         | 3.54 | 0 <sup>(8)</sup> |

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- (1) Our annual incentives usually are (and, in fiscal year 2013, were) based upon threshold, target and maximum payout amounts set by our Board, upon the recommendation of the Compensation Committee, at the beginning of each fiscal year. The actual amounts earned by each named executive officer for fiscal year 2013 is set forth in the Summary Compensation Table elsewhere in this Proxy Statement under the heading *Non-Equity Incentive Plan Compensation*.
- (2) The maximum amount payable if results exceed objectives was 150% for our named executive officers.
- (3) The grant date fair value is generally the amount we would expense in our financial statements over the award's service period in accordance with ASC Topic 718, but does exclude the impact of estimated forfeitures related to service-based vesting conditions.
- (4) Ms. Shemwell did not participate in our executive incentive plans, but instead had a separate commission plan as discussed in additional detail elsewhere in this Proxy Statement under the heading *Sales Commission Plan*.
- (5) Mr. Ginsburg departed the Company effective July 29, 2013.
- (6) Mr. Rodriguez resigned from the Company effective April 25, 2013.
- (7) Value of performance equity awards if performance metrics are achieved.
- (8) Departed the Company prior to the vesting date for the performance period.

**Outstanding Equity Awards at Fiscal Year-End**

The following table sets forth certain information with respect to the value of all unexercised options previously awarded to our named executive officers as of June 30, 2013:

**Outstanding Equity Awards**

| Name              | Option Awards   |   |                            |                        | Stock Awards  |  |
|-------------------|---|---|----------------------------|------------------------|---|--|
|                   | Number of Securities Underlying Unexercised Options Exercisable (#) | Number of Securities Underlying Unexercised Options Unexercisable (#) | Option Exercise Price (\$) | Option Expiration Date | Number of Shares or Units of Stock That Have Not Vested (#) | Market Value of Shares or Units of Stock That Have Not Vested (\$) |
| Charles W. Berger | 0   | 900,000 <sup>(1)</sup>  | \$ 3.17                    | 05/02/2020             |   |  |
|                   | 0   | 900,000 <sup>(2)</sup>  | \$ 3.17                    | 05/02/2020             |   |  |
| Frank Blohm       | 60,000  | 0   | \$ 3.74                    | 08/03/2017             | 10,000 <sup>(10)</sup>                                      | 34,400   |
|                   | 82,500  | 0   | \$ 4.25                    | 10/26/2017             | 75,000 <sup>(11)</sup>                                      | 258,000  |
|                   | 82,500  | 0   | \$ 4.25                    | 10/26/2017             | 65,000 <sup>(12)</sup>                                      | 223,600  |
|                   | 27,708  | 19,792 <sup>(3)</sup>   | \$ 3.68                    | 02/02/2018             |   |  |
|                   | 36,666  | 43,334 <sup>(4)</sup>   | \$ 3.29                    | 08/03/2018             |   |  |
| Dave Ginsburg     | 100,000   | 0   | \$ 3.38                    | 08/21/2019             |   |  |
|                   | 258,333   | 141,667 <sup>(5)</sup>  | \$ 3.68                    | 02/02/2018             | 25,000 <sup>(13)</sup>                                      | 86,000   |
|                   | 20,000  | 40,000 <sup>(6)</sup>   | \$ 3.79                    | 07/27/2019             | 6,666 <sup>(14)</sup>                                       | 22,931   |
| John Kurtzweil    | 0   | 55,000 <sup>(7)</sup>   | \$ 3.54                    | 11/02/2019             | 65,000 <sup>(15)</sup>                                      | 223,600  |
|                   | 87,500  | 262,500 <sup>(8)</sup>  | \$ 3.38                    | 08/21/2019             | 30,000 <sup>(16)</sup>                                      | 103,200  |
|                   |   |   |                            |                        | 26,666 <sup>(17)</sup>                                      | 91,731   |
| Oscar Rodriguez   |   |   |                            |                        | 65,000 <sup>(18)</sup>                                      | 223,600  |
| Nancy Shemwell    | 42,795  | 0   | \$ 3.54                    | 11/02/2019             |   |  |
|                   |   | 250,000 <sup>(9)</sup>  | \$ 3.54                    | 11/02/2019             | 100,000 <sup>(19)</sup>                                     | 344,000  |
|                   |   |   |                            |                        | 50,000 <sup>(20)</sup>                                      | 172,000  |
|                   |   |   |                            |                        | 20,504 <sup>(21)</sup>                                      | 70,533   |

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- (1) This stock option vests as to 25% of the shares on 04/25/2014 and as to 1/48th of the shares each month over the three years thereafter.

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- (2) Performance based stock option based on stock price.
- (3) This stock option vests monthly and will be fully vested on 02/02/15
- (4) This stock option vests monthly and will be fully vested on 08/03/2015.
- (5) This stock option vests monthly and will be fully vested on 02/29/2016.
- (6) This stock option vests monthly and will be fully vested on 02/29/2016.
- (7) This stock option vests as to 25% of the shares on 11/02/13 and as to 1/48th of the shares each month over the three years thereafter.
- (8) This stock option vests monthly and will be fully vested on 06/29/2016.
- (9) This stock option vests as to 25% of the shares on 09/24/2013 and as to 1/48th of the shares each month over the three years thereafter.
- (10) These RSU s vest as to 33.3% of the units each anniversary over three years, starting 08/03/2012.
- (11) These RSU s vest as to 33.3% of the units each anniversary over three years, starting 08/21/2013.
- (12) Performance based restricted stock units.
- (13) These RSU s vest as to 50% of the units each anniversary over two years, starting 09/08/2012.
- (14) These RSU s vest as to 33.3% of the units each anniversary over three years, starting on 02/28/2013.
- (15) Performance based restricted stock units.
- (16) These RSU s vest as to 33.3% of the units each anniversary over three years, starting 11/02/2013.
- (17) These RSU s vest as to 33.3% of the units each anniversary over three years, starting 06/29/2013.
- (18) Performance based restricted stock units.
- (19) These RSU s vest as to 33.3% of the units each anniversary over three years, starting 09/24/2013.
- (20) Performance based restricted stock units.
- (21) These RSU s vest as to 50% of the units each anniversary over two years, starting 05/02, 2014.

**Option Exercises and Stock Vested During Last Fiscal Year**

The following table sets forth certain information concerning option exercises by our named executive officers and vesting of our common stock held by them during the fiscal year ended June 30, 2013.

**OPTION EXERCISES AND STOCK VESTED****Option Exercises and Stock Awards Released**

|                   | Option Awards                             |                                 | Stock Awards                             |                                   |
|-------------------|---|---------------------------------|--|-----------------------------------|
|                   | Number of Shares Acquired on Exercise (#) | Value Received on Exercise (\$) | Number of Shares Acquired on Vesting (#) | Value Realized on Vesting (\$)(1) |
| Charles W. Berger |   |                                 |  |                                   |
| Frank Blohm       |   |                                 | 15,513                                   | 91,314.66                         |
| David Ginsburg    |   |                                 | 20,685                                   | 125,508.51                        |
| John Kurtzweil    |   |                                 | 13,334                                   | 45,868.96                         |
| Oscar Rodriguez   | 1,259,414                                 | 519,477.51                      | 186,311                                  | 613,564.42                        |
| Nancy Shemwell    |   |                                 |  |                                   |

- (1) Represents the amount realized based on the market price of our common stock on the vesting date.

**Pension Benefits and Nonqualified Deferred Compensation Plans**

We do not have any plans with any of our named executive officers that provide for payments or other benefits at, following, or in connection with retirement. We also do not have any defined contribution or other plan with any of our named executive officers that provides for the deferral of compensation on a basis that is not tax qualified.

**Table of Contents****Potential Payments upon Termination or Change in Control**

We have entered into agreements under our Executive Change of Control and Severance Plan that may require us to provide compensation to our named executive officers in the event of a termination of employment or a change in control of us:

These agreements, including the circumstances that would trigger payments or the provision of other benefits, and material conditions and obligations applicable to the recipient of payments and benefits, are described in *Summary of Employment and Other Agreements* elsewhere in this *Executive Compensation* section.

The following table describes the potential payments that we would have been required to make upon our termination of each of our named executive officers, whether or not within one year following a change in our control, had we terminated such officer as of June 30, 2013, under the assumptions set forth in the footnotes to the table. Accordingly, the table does not present information regarding named executive officers whose service to us was terminated prior to this date. Except as expressly noted, these assumptions have not actually occurred.

|  | Potential Payments<br>upon Termination<br>Other than for<br>Cause (\$) <sup>(1)</sup> | Potential Payments<br>Following Change<br>of Control<br>Other than for<br>Cause (\$) <sup>(2)</sup> | Potential Payments<br>upon Termination<br>Other than for<br>Cause Following<br>Change in<br>Control<br>(\$) <sup>(3)</sup> |
|--|---|---|--|
| <b><u>Charles W. Berger</u></b>                  |   |   |  |
| Salary <sup>(4)</sup>                            | 500,000   |   | 750,000  |
| Bonus  |   |   |  |
| Equity award vesting acceleration <sup>(6)</sup> | 70,875  |   | 243,000  |
| Health and welfare benefits <sup>(7)</sup>       | 18,031  |   | 27,046   |
| Total  | 589,906   |   | 1,020,046  |
| <b><u>John Kurtzweil</u></b>                     |   |   |  |
| Salary <sup>(4)</sup>                            | 385,000   |   | 385,000  |
| Bonus <sup>(5)</sup>                             | 192,500   |   | 192,500  |
| Equity award vesting acceleration <sup>(6)</sup> |   | 51,116  | 107,481  |
| Health and welfare benefits <sup>(7)</sup>       | 20,955  |   | 20,955   |
| Total  | 598,455   | 51,116  | 705,936  |
| <b><u>Nancy Shemwell</u></b>                     |   |   |  |
| Salary <sup>(4)</sup>                            |   |   | 325,000  |
| Bonus <sup>(5)</sup>                             |   |   | 162,500  |
| Equity award vesting acceleration <sup>(6)</sup> |   | 149,936   | 414,534  |
| Health and welfare benefits <sup>(7)</sup>       |   |   | 6,800  |
| Total  |   | 149,936   | 908,834  |
| <b><u>Frank Blohm</u></b>                        |   |   |  |
| Salary <sup>(4)</sup>                            |   |   | 300,000  |
| Bonus <sup>(5)</sup>                             |   |   | 150,000  |
| Equity award vesting acceleration <sup>(6)</sup> |   | 108,949   | 304,900  |



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|   |           |         |
|---|-----------|---------|
| Health and welfare benefits <sup>(7)</sup>        |           | 13,955  |
| Total   | 108,949   | 768,855 |
| <b><u>David Ginsburg</u><sup>(8)</sup></b>        |           |         |
| Salary  | 147,500   |         |
| Bonus   |           |         |
| Equity award vesting acceleration <sup>(9)</sup>  | 100,250   |         |
| Health and welfare benefits                       |           |         |
| Total   | 247,750   |         |
| <b><u>Oscar Rodriguez</u><sup>(10)</sup></b>      |           |         |
| Salary  | 524,000   |         |
| Bonus   | 480,334   |         |
| Equity award vesting acceleration <sup>(11)</sup> | 346,650   |         |
| Health and welfare benefits                       | 20,955    |         |
| Total   | 1,371,939 |         |

(1) Assumes termination without cause as of June 30, 2013, not within one year after a change in control. Cause is described, as applicable to each officer, in the *Summary of Employment and Other Agreements* section of this Proxy Statement. As a condition to receiving any benefits under this column, the applicable named executive officer is required to execute a general release of known and unknown claims in a form satisfactory to us.

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- (2) Assumes a hypothetical change in control as of June 30, 2013, with no termination without cause within one year after the change in control. Also assumes that the company acquiring us in the hypothetical change in control did not assume or substitute equivalent replacements for the outstanding equity awards of the participants in the Severance Plan.
- (3) Assumes termination without cause as of June 30, 2013, within one year after a change in control.
- (4) Under the Severance Plan, if a participant in the Severance Plan is terminated without cause or resigns as a result of certain adverse circumstances described in the Severance Plan within 12 months after a change in control, among other things, the participant would be entitled to a lump sum payment in an amount equal to the aggregate amount of his monthly salary for a period of 18 months in the case of the chief executive officer and 12 months in the cases of the other named executive officers. Mr. Berger's salary coverage is governed by his offer letter with the Company. The amounts listed do not include the payment of accrued salary that would be due upon termination of employment, are not adjusted for any applicable tax withholding, and do not include portions of bonuses that may be payable on a pro-rated basis based on the amount earned as of the time of the termination of employment.
- (5) Under the Severance Plan, if a participant in the Severance Plan is terminated without cause or resigns as a result of certain adverse circumstances described in the Severance Plan within 12 months after a change in control, among other things, the participant would be entitled to a lump sum bonus payment for a period of 18 months in the case of the chief executive officer and 12 months in the cases of the other named executive officers with the applicable annual bonus amount to be based upon the aggregate of all annual incentive bonuses that would have been earned by the participant for the fiscal year of termination of employment, determined as if 100% of all applicable performance goals were achieved. The amounts listed do not include the payment of accrued salary that would be due upon termination of employment, are not adjusted for any applicable tax withholding, and do not include portions of bonuses that may be payable on a pro-rated basis based on the amount earned as of the time of the termination of employment.
- (6) Assumes a price per share of our common stock equal to \$3.44, the closing market price on June 28, 2013 (the last business day of our last fiscal year). In the case of shares of common stock or RSUs, represents the aggregate value of all shares that would be accelerated. In the case of stock options, represents the aggregate spread (i.e., the difference between the exercise price and the closing price of our common stock on June 28, 2013) with respect to all options that would be accelerated. The exercise price of all stock options held by our named executive officers as of such date was greater than \$3.44 resulting in no aggregate spread value for these stock options.
- (7) Under the Severance Plan, if a participant in the Severance Plan is terminated without cause or resigns as a result of certain adverse circumstances described in the Severance Plan within 12 months after a change in control, among other things, the participant is entitled to reimbursement of 18 months of COBRA premiums in the case of the chief executive officer and 12 months of COBRA premiums in the cases of the other named executive officers. Assumes our payment of all premiums necessary to cover the applicable officer from June 30, 2013 until the 18 or 12 month anniversary thereof, as applicable, assuming that the applicable officer was covered under our group health plan as of June 30, 2013, that the officer timely elected to continue these benefits until the 18 or 12 month anniversary thereof, as applicable, and that premiums remain at the amounts in effect as of June 30, 2013. Mr. Berger's COBRA coverage is governed by his offer letter with the Company.
- (8) Mr. Ginsburg departed from the Company effective July 29, 2013, and the included amounts reflect actual benefits paid Mr. Ginsburg upon his departure.
- (9) Represents the value calculated upon the vesting of 25,000 performance stock units granted Mr. Ginsburg as based on the closing price of our common stock of \$4.01 on July 29, 2013, Mr. Ginsburg's last day with the Company.
- (10) Mr. Rodriguez resigned from the Company effective April 25, 2013 and the included amounts reflect actual benefits paid Mr. Rodriguez upon his resignation.
- (11) Represents the value calculated upon the vesting of 452,209 of Mr. Rodriguez's unvested options (225,000 at \$3.03 per share, 150,000 at \$3.29 per share, and 77,209 shares at \$3.54 per share) and 105,000 of Mr. Rodriguez's unvested RSUs as based on the closing price of our common stock of \$3.08 on April 25, 2013, Mr. Rodriguez's last day with the Company.

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

See above under *Corporate Governance Compensation Committee Interlocks and Insider Participation*.

## **CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

### **Actual or Potential Conflicts of Interest**

We are not currently party to any transaction, or any currently proposed transaction, in which we were or are to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest.

### **Reporting, Review and Approval of Related Party Transactions**

Pursuant to the charter of the Audit Committee, the Audit Committee has the responsibility and duty to approve all related-party transactions after reviewing each transaction for potential conflicts of interests and other improprieties. Pursuant to our Code of Business Conduct and Ethics:

Each employee, including each executive officer, is prohibited from engaging in activities that compete with us or compromise our interests unless first notifying our General Counsel or Vice President of Talent and Culture, and obtaining a waiver in writing in each instance. Each employee is required to inform his or her manager or our legal department of any conflict of interest, and is encouraged to consult with his or her manager or our legal department if the employee becomes aware of any conflict or potential conflict, or has a question as to a potential conflict.

Each member of our Board is prohibited from participating in any activities that are contrary to our interests, or which interfere with the director's ability to perform his or her duties objectively and effectively, or which interfere with the director's duty of loyalty to us and our stockholders. Each member of our Board is required to disclose to our Board any potential conflict of interest regarding or personal interest in any transaction our Board is considering. As to any potential conflict, the independent directors consult, as appropriate, with management and counsel in assessing the potential conflict, and the appropriate action or procedure for addressing or avoiding the potential conflict. A director is required to recuse himself or herself from participation in any deliberation or decision regarding a matter or transaction in which there is a conflict of interest between our interests and the director's personal interests or the interests of any other entity to which the director provides services. In the event a director becomes aware of any potential corporate opportunity that the director believes would have any direct or indirect value to us, the director is required to advise the Chief Executive Officer or our Board of the opportunity. In addition, each director is required to notify our Board of any outside board seats, public or private, on which the director has agreed to serve. Related party transactions in which a director may be involved are subject to the review of the Audit Committee.

The Code of Business Conduct and Ethics provides the following non-exhaustive list of examples of actual or potential conflicts with respect to the persons subject to the Code of Business Conduct and Ethics (a "Subject Person"):

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receipt, by a Subject Person or a member of his or her family, of improper personal benefits as a result of the Subject Person's position with us;

use by the Subject Person of our property for his or her personal benefit;

engagement by the Subject Person in activities that interfere with the Subject Person's loyalty to us or his or her ability to perform duties or responsibilities effectively;

work by a Subject Person simultaneously (whether as an employee or a consultant) for a competitor, customer or supplier;

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a Subject Person, or a member of his or her family, having a financial interest in a customer, supplier or competitor which is significant enough to cause divided loyalty with us, or the appearance of divided loyalty (with the significance of a financial interest depending on many factors, such as size of investment in relation to the Subject Person's income, net worth and/or financial needs, the Subject Person's potential to influence decisions that could impact the Subject Person's interests, and the nature of the business or level of competition between us and the supplier, customer or competitor);

acquisition, by a Subject Person or a member of his or her family, of an interest in property (such as real estate, patent or other intellectual property rights or securities) in which the Subject Person has reason to know we have, or might have, a legitimate interest;

receipt, by a Subject Person or a member of his or her family, of a loan or a guarantee of a loan from a customer, supplier or competitor (other than a loan from a financial institution made in the ordinary course of business and on an arm's-length basis);

a Subject Person's divulging or using our confidential information such as financial data, customer information, or computer programs for the Subject Person's own personal or business purposes that are not first approved by our Vice President General Counsel or Vice President of Talent and Culture in writing;

a Subject Person's making gifts or payments, or providing special favors, to customers, suppliers or competitors (or their immediate family members) with a value significant enough to cause the customer, supplier or competitor to make a purchase, or take or forego other action, which is beneficial to us and which the customer, supplier or competitor would not otherwise have taken;

a Subject Person's being given the right to buy stock in other companies or receipt of cash or other payments in return for promoting the services of an advisor, such as an investment banker, to us;

a Subject Person's, or his or her family member's, solicitation or acceptance of valuable gifts, payments, special favors or other consideration from customers, suppliers or competitors; and

a Subject Person's giving or receipt of gifts not in compliance with the Foreign Corrupt Practices Act.

**EQUITY COMPENSATION PLAN INFORMATION**

We currently maintain two compensation plans that provide for the issuance of our common stock to officers and other employees, directors and consultants. These consist of the Purchase Plan and the 2005 Plan, which have been approved by our stockholders. The Purchase Plan was adopted by our Board in January 1999, and was approved by our stockholders in February 1999. The 2005 Plan was adopted by our Board in October 2005, and was approved by our stockholders in December 2005, replacing our prior equity compensation plans. The 2005 Plan expressly provides that, without the approval of a majority of the votes cast in person or by proxy at a meeting of our stockholders, the administrator of the 2005 Plan (the Compensation Committee or other committee or subcommittee of our Board or, in the absence of a committee, our Board) may not provide for either the cancellation of outstanding options or SARs in exchange for the grant of new options or SARs at a lower exercise price or the amendment of outstanding options or SARs reduce the exercise price. We are currently seeking stockholder approval of the 2013 Equity Incentive Plan. See Proposal Four in this Proxy Statement.

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The following table summarizes our equity compensation plans as of June 30, 2013:

| <b>Plan Category</b>                                       | <b>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</b> | <b>Weighted Average Exercise Price of Outstanding Options, Warrants and Rights</b> | <b>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans <sup>(3)</sup></b> |
|--|--|--|--|
| Equity compensation plans approved by security holders     | 11,353,576 <sup>(1)</sup>  | 2.9003   | 5,581,948 <sup>(4)</sup>   |
| Equity compensation plans not approved by security holders | 85,777 <sup>(2)</sup>  | 6.8307   | 0  |
| <b>Totals</b>  | <b>11,439,353</b>  | <b>2.9298</b>  | <b>5,581,948</b>   |

- (1) Of this amount, options for 8,254,582 and 2,293,923 shares of restricted stock were outstanding under the 2005 Plan, and options for 805,071 were outstanding under the 1996 Plan.
- (2) Of this amount, options for 64,027 shares were outstanding under the 2000 Stock Plan and options for 21,750 were outstanding under the 2001 Stock Plan.
- (3) Effective as of December 2, 2005, the 1996 Plan, the 2000 Stock Plan and the 2001 Stock Plan were terminated and up to 11,000,000 shares subject to awards that remained outstanding under the 1996 Plan, the 2000 Stock Plan the 2001 Stock Plan as of December 2, 2005 and which subsequently terminate without having been exercised or which are forfeited to the Company were added to the shares available under the 2005 Plan.
- (4) Of this amount 1,966,606 shares were available for issuance under the Stock Purchase Plan and 3,615,342 shares were available for issuance under the 2005 Plan

Please see Part II, Item 8 Financial Statements and Supplementary Data of our 2013 Annual Report on Form 10-K in the notes to Consolidated Financial Statements at Note 5, Employee Benefit Plans (including Share-based Compensation) for further information regarding our equity compensation plans and awards.

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**REPORT OF THE COMPENSATION COMMITTEE**

The Compensation Committee of the Board of Directors has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of the Securities and Exchange Commission's Regulation S-K with management. Based on such review and discussions, the Compensation Committee recommended to the Board of Directors that the Compensation Discussion and Analysis be included in our Annual Report on Form 10-K for the fiscal year ended June 30, 2013, as amended.

The material in this report shall not be deemed to be soliciting material or filed with the Securities and Exchange Commission, shall be deemed furnished in our Annual Report on Form 10-K for the fiscal year ended June 30, 2013, as amended, and shall not be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as a result of furnishing the disclosure in this manner.

COMPENSATION COMMITTEE

Charles Carinalli, Chairman

Maury Austin

Edward B. Meyercord, III

John C. Shoemaker

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**REPORT OF THE AUDIT COMMITTEE**

The Audit Committee (the "Audit Committee") of the Board of Directors (the "Board") of Extreme Networks, Inc. (the "Company") oversees the quality of the Company's financial statements and its financial reporting on behalf of the Board. Management has the primary responsibility for the financial statements, maintaining appropriate accounting and financial reporting principles and policies and the reporting process, including internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The Company's independent registered public accounting firm, is responsible for expressing opinions on the Company's annual financial statements and its internal control over financial reporting as of the end of the fiscal year. It is not the duty or responsibility of the Audit Committee or its members to conduct any type of auditing or accounting review or procedure, and each member of the Audit Committee relies on the integrity of those persons and organizations within and outside of the Company from whom the Audit Committee receives information and the accuracy of the financial and other information provided to the Audit Committee.

The current members of the Audit Committee are Maury Austin, John H. Kispert, Edward H. Kennedy and Edward Terino. Each member of the Audit Committee has been determined by the Board to be independent for purposes of the NASDAQ Marketplace Rules and the rules of the U.S. Securities and Exchange Commission (the "SEC") as these rules apply to audit committee members. The Board has determined that Mr. Kispert is an audit committee financial expert, as defined in the rules of the SEC.

The Audit Committee has discussed and reviewed with the Company's independent auditors all matters required to be discussed under Statement on Auditing Standards No. 61, *Communication with Audit Committees*, SEC rules and other professional standards. The Audit Committee has received from the independent auditors a formal written statement describing all relationships between the auditors and the Company that might bear on the auditors' independence consistent with Ethics and Independence Rule 3526 of the Public Company Accounting Oversight Board, *Communication with Audit Committee Concerning Independence*, discussed with the independent auditors any relationships that may impact their objectivity and independence, and satisfied itself as to the independent auditors' independence.

The Audit Committee discussed with the Company's independent auditors the overall scope and plans for their respective audits. The Audit Committee meets with the Company's independent auditors, with and without the Company's management present, to discuss the results of their audit of the Company's financial statements and its internal control over financial reporting as of the end of the fiscal year, the Company's internal audits and the overall quality of the Company's financial reporting. Additionally, the Audit Committee has discussed and reviewed with the Company's management the audited financial statements and management's report on internal control over financial reporting as of the end of the fiscal year.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the Board that the Company's audited financial statements be included in the Company's Annual Report on Form 10-K for the year ended June 30, 2013 for filing with the SEC. The Audit Committee and the Board have also recommended ratification of KPMG LLP as the Company's independent registered public accounting firm for the fiscal year ending June 30, 2014.

AUDIT COMMITTEE

John H. Kispert, Chairman

Maury Austin



Edward H. Kennedy

Edward Terino

*The foregoing Audit Committee Report shall not be deemed to be filed or incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates such information by reference.*

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**STOCKHOLDER PROPOSALS TO BE PRESENTED AT NEXT ANNUAL MEETING**

Stockholder proposals may be included in our proxy statement for an annual meeting so long as they are provided to us on a timely basis and satisfy the other conditions set forth in SEC regulations under Rule 14a-8 regarding the inclusion of stockholder proposals in company-sponsored proxy materials. Stockholder proposals not intended to be included in our proxy materials may be brought before an Annual Meeting so long as they are provided to us on a timely basis and satisfy the other conditions set forth in the rules of the SEC and under our bylaws. Under our bylaws, in order for a stockholder proposal to be properly brought before the 2014 Annual Meeting, the proposal must be timely and be received at our principal executive offices, addressed to the Secretary, not earlier than July 23, 2014 and not later than August 22, 2014, which, respectively, are 120 days and 90 days prior to the one-year anniversary of the 2013 Annual Meeting. In the event that the date of the 2014 Annual Meeting is subsequently proposed to be more than 30 days earlier or later than such anniversary date, notice by the stockholder to be timely must be received not later than the close of business on the later of the 90th day prior to the 2014 Annual Meeting or the 10th day following the date on which public announcement of the date of such meeting is first made.

If a stockholder proposal is brought before the 2014 Annual Meeting, our management proxy holders will be authorized by our proxy form to vote for or against the proposal, in their discretion, in several circumstances, including if we provide information in the proxy statement for the meeting (a) regarding the nature of the matter and (b) advising stockholders how management intends to exercise its discretion to vote on the matter.

**TRANSACTION OF OTHER BUSINESS**

As of the date of this Proxy Statement, we know of no business that will be conducted at the 2013 Annual Meeting, other than as described in this Proxy Statement. If any other matter is properly brought before the 2013 Annual Meeting, or any adjournment or postponement of the 2013 Annual Meeting, the persons named in the accompanying form of proxy intend to vote the proxy on such matters in their discretion.

**STOCKHOLDERS SHARING THE SAME LAST NAME AND ADDRESS**

To reduce the expense of delivering duplicate proxy materials to stockholders who may have more than one account holding Extreme Networks stock but sharing the same address, we have adopted a procedure approved by the SEC called householding. Under this procedure, certain stockholders of record who have the same address and last name, and who do not participate in electronic delivery of proxy materials, will receive only one copy of our Notice of Internet Availability of Proxy Materials and, as applicable, any additional proxy materials that are delivered until such time as one or more of these stockholders notifies us that they want to receive separate copies. This procedure reduces duplicate mailings and saves printing costs and postage fees, as well as natural resources. Stockholders who participate in householding will continue to have access to and utilize separate proxy voting instructions.

If you receive a single set of proxy materials as a result of householding, and you would like to have separate copies of our Notice of Internet Availability of Proxy Materials, annual report, or proxy statement mailed to you, please submit a request to our Corporate Secretary, or call our Investor Relations department at (408) 579-3030, and we will promptly send you what you have requested. However, please note that if you want to receive a paper proxy or voting instruction form or other proxy materials for purposes of this year's Annual Meeting, you should follow the instructions included in the Notice of Internet Availability of Proxy Materials that was sent to you. You can also contact our Investor Relations department at the phone number above if you received multiple copies of the Annual Meeting materials and would prefer to receive a single copy in the future, or if you would like to opt out of householding for future mailings.



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**COMMUNICATING WITH EXTREME NETWORKS**

You can obtain information about us by one of the following methods:

1. Our home page on the Internet, located at <http://www.extremenetworks.com>, gives you access to product and marketing information, in addition to recent press releases, financial information and stock quotes, as well as links to our filings with the SEC.
2. To have information such as our latest quarterly earnings release, 2013 Annual Report, or Quarterly Report on Form 10-Q mailed to you, please contact our Investor Relations at (408) 579-3030.

For other questions that you wish to direct via telephone, you may contact our Investor Relations department at (408) 579-3030.

Should you wish to send correspondence, you may send it either to (1) our Investor Relations department, or (2) if you wish for your correspondence to directly reach our Board, you may send it to our Chairman of the Board, who has been selected by our independent directors to receive, distribute and arrange responses for communications from our stockholders to our Board.

In sending any correspondence, you should use the following address:

Extreme Networks, Inc.  
145 Rio Robles  
San Jose, California 95134  
Attn: Investor Relations  
-or-  
Attn: Chairman of the Board

We encourage you to conserve natural resources, as well as reduce printing and mailing costs, by signing up for electronic delivery of stockholder communications at <http://investor.extremenetworks.com>. For more information, see above under the heading *Electronic Delivery of Stockholder Communications*.

BY ORDER OF THE BOARD OF DIRECTORS

**Charles W. Berger**

President and Chief Executive Officer

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**Appendix A**

**EXTREME NETWORKS, INC.**

**2013 EQUITY INCENTIVE PLAN**

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**Extreme Networks, Inc.**

**2013 Equity Incentive Plan**

**1. ESTABLISHMENT, PURPOSE AND TERM OF PLAN.**

**1.1 Establishment.** The Extreme Networks, Inc. 2013 Equity Incentive Plan (the *Plan* ) is hereby established effective as of \_\_\_\_\_, 2013, the date of its approval by the stockholders of the Company (the *Effective Date* ).

**1.2 Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Performance Shares, Performance Units, Cash-Based Awards and Other Stock-Based Awards.

**1.3 Term of Plan.** The Plan shall continue in effect until its termination by the Committee; provided, however, that all Awards shall be granted, if at all, within ten (10) years from the Effective Date.

**2. DEFINITIONS AND CONSTRUCTION.**

**2.1 Definitions.** Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) *Affiliate* means (i) a parent entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) a subsidiary entity, other than a Subsidiary Corporation, that is controlled by the Company directly or indirectly through one or more intermediary entities. For this purpose, the terms parent, subsidiary, control and controlled by shall have the meanings assigned such terms for the purposes of registration of securities on Form S-8 under the Securities Act.

(b) *Award* means any Option, Stock Appreciation Right, Restricted Stock Purchase Right, Restricted Stock Bonus, Restricted Stock Unit, Performance Share, Performance Unit, Cash-Based Award or Other Stock-Based Award granted under the Plan.

(c) *Award Agreement* means a written or electronic agreement between the Company and a Participant setting forth the terms, conditions and restrictions applicable to an Award.

(d) *Board* means the Board of Directors of the Company.

(e) **Cash-Based Award** means an Award denominated in cash and granted pursuant to Section 11.

(f) **Cashless Exercise** means a Cashless Exercise as defined in Section 6.3(b)(i).

(g) **Cause** means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between a Participant and a Participating Company applicable to an Award, any of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Participating Company documents or records; (ii) the Participant's material failure to abide by a Participating Company's code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of a Participating Company (including, without limitation, the Participant's improper use or disclosure of a Participating Company's confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on a Participating Company's reputation or business; (v) the Participant's repeated failure to perform any reasonable assigned duties after written notice from a Participating Company of, and a reasonable opportunity to cure, such failure; (vi) any material breach by the Participant of any

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employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and a Participating Company, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with a Participating Company.

(h) **Change in Control** means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between the Participant and a Participating Company applicable to an Award, the occurrence of any one or a combination of the following:

(i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total Fair Market Value or total combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of Directors; provided, however, that a Change in Control shall not be deemed to have occurred if such degree of beneficial ownership results from any of the following: (A) an acquisition by any person who on the Effective Date is the beneficial owner of more than fifty percent (50%) of such voting power, (B) any acquisition directly from the Company, including, without limitation, pursuant to or in connection with a public offering of securities, (C) any acquisition by the Company, (D) any acquisition by a trustee or other fiduciary under an employee benefit plan of a Participating Company or (E) any acquisition by an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the voting securities of the Company; or

(ii) an Ownership Change Event or series of related Ownership Change Events (collectively, a **Transaction**) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities entitled to vote generally in the election of Directors or, in the case of an Ownership Change Event described in Section 2.1(ee)(iii), the entity to which the assets of the Company were transferred (the **Transferee**), as the case may be; or

(iii) a date specified by the Committee following approval by the stockholders of a plan of complete liquidation or dissolution of the Company;

provided, however, that a Change in Control shall be deemed not to include a transaction described in subsections (i) or (ii) of this Section 2.1(h) in which a majority of the members of the board of directors of the continuing, surviving or successor entity, or parent thereof, immediately after such transaction is comprised of Incumbent Directors.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall determine whether multiple events described in subsections (i), (ii) and (iii) of this Section 2.1(h) are related and to be treated in the aggregate as a single Change in Control, and its determination shall be final, binding and conclusive.

(i) **Code** means the Internal Revenue Code of 1986, as amended, and any applicable regulations and administrative guidelines promulgated thereunder.

(j) *Committee* means the Compensation Committee and such other committee or subcommittee of the Board, if any, duly appointed to administer the Plan and having such powers in each instance as shall be specified by the Board. If, at any time, there is no committee of the Board then authorized or properly constituted to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers.

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(k) **Company** means Extreme Networks, Inc., a Delaware corporation, and any successor corporation thereto.

(l) **Consultant** means a person engaged to provide consulting or advisory services (other than as an Employee or a Director) to a Participating Company, provided that the identity of such person, the nature of such services or the entity to which such services are provided would not preclude the Company from offering or selling securities to such person pursuant to the Plan in reliance on registration on Form S-8 under the Securities Act.

(m) **Covered Employee** means, at any time the Plan is subject to Section 162(m), any Employee who is or may reasonably be expected to become a covered employee as defined in Section 162(m), or any successor statute, and who is designated, either as an individual Employee or a member of a class of Employees, by the Committee no later than the earlier of (i) the date that is ninety (90) days after the beginning of the Performance Period, or (ii) the date on which twenty-five percent (25%) of the Performance Period has elapsed, as a Covered Employee under this Plan for such applicable Performance Period.

(n) **Director** means a member of the Board.

(o) **Disability** means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between the Participant and a Participating Company applicable to an Award, the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) of the Code.

(p) **Dividend Equivalent Right** means the right of a Participant, granted at the discretion of the Committee or as otherwise provided by the Plan, to receive a credit for the account of such Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.

(q) **Employee** means any person treated as an employee (including an Officer or a Director who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; provided, however, that neither service as a Director nor payment of a Director's fee shall be sufficient to constitute employment for purposes of the Plan. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual's employment or termination of employment, as the case may be. For purposes of an individual's rights, if any, under the terms of the Plan as of the time of the Company's determination of whether or not the individual is an Employee, all such determinations by the Company shall be final, binding and conclusive as to such rights, if any, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination as to such individual's status as an Employee.

(r) **Exchange Act** means the Securities Exchange Act of 1934, as amended.

(s) **Fair Market Value** means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

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(i) Except as otherwise determined by the Committee, if, on such date, the Stock is listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock as quoted on the national or regional securities exchange or quotation system constituting the primary market for the Stock, as reported in *The Wall Street Journal* or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or quotation system, the date on which the Fair Market Value shall be established shall be the last day on

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which the Stock was so traded or quoted prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

(ii) Notwithstanding the foregoing, the Committee may, in its discretion, determine the Fair Market Value of a share of Stock on the basis of the opening, closing, or average of the high and low sale prices of a share of Stock on such date or the preceding trading day, the actual sale price of a share of Stock received by a Participant, any other reasonable basis using actual transactions in the Stock as reported on a national or regional securities exchange or quotation system, or on any other basis consistent with the requirements of Section 409A. The Committee may also determine the Fair Market Value upon the average selling price of the Stock during a specified period that is within thirty (30) days before or thirty (30) days after such date, provided that, with respect to the grant of an Option or SAR, the commitment to grant such Award based on such valuation method must be irrevocable before the beginning of the specified period. The Committee may vary its method of determination of the Fair Market Value as provided in this Section for different purposes under the Plan to the extent consistent with the requirements of Section 409A.

(iii) If, on such date, the Stock is not listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse, and in a manner consistent with the requirements of Section 409A.

(t) **Full Value Award** means any Award settled in Stock, other than (i) an Option, (ii) a Stock Appreciation Right, or (iii) a Restricted Stock Purchase Right or an Other Stock-Based Award under which the Company will receive monetary consideration equal to the Fair Market Value (determined on the effective date of grant) of the shares subject to such Award.

(u) **Incentive Stock Option** means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(v) **Incumbent Director** means a director who either (i) is a member of the Board as of the Effective Date or (ii) is 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 excluding a director who was elected or nominated in connection with an actual or threatened proxy contest relating to the election of directors of the Company).

(w) **Insider** means an Officer, a Director or other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(x) **Net Exercise** means a Net Exercise as defined in Section 6.3(b)(iii).

(y) **Nonemployee Director** means a Director who is not an Employee.

(z) **Nonemployee Director Award** means any Award granted to a Nonemployee Director.



(aa) **Nonstatutory Stock Option** means an Option not intended to be (as set forth in the Award Agreement) or which does not qualify as an incentive stock option within the meaning of Section 422(b) of the Code.

(bb) **Officer** means any person designated by the Board as an officer of the Company.

(cc) **Option** means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(dd) **Other Stock-Based Award** means an Award denominated in shares of Stock and granted pursuant to Section 11.

(ee) **Ownership Change Event** means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the

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stockholders of the Company of securities of the Company representing more than fifty percent (50%) of the total combined voting power of the Company's then outstanding securities entitled to vote generally in the election of Directors; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

(ff) **Parent Corporation** means any present or future parent corporation of the Company, as defined in Section 424(e) of the Code.

(gg) **Participant** means any eligible person who has been granted one or more Awards.

(hh) **Participating Company** means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(ii) **Participating Company Group** means, at any point in time, the Company and all other entities collectively which are then Participating Companies.

(jj) **Performance Award** means an Award of Performance Shares or Performance Units.

(kk) **Performance Award Formula** means, for any Performance Award, a formula or table established by the Committee pursuant to Section 10.3 which provides the basis for computing the value of a Performance Award at one or more levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.

(ll) **Performance-Based Compensation** means compensation under an Award that satisfies the requirements of Section 162(m) for certain performance-based compensation paid to Covered Employees.

(mm) **Performance Goal** means a performance goal established by the Committee pursuant to Section 10.3.

(nn) **Performance Period** means a period established by the Committee pursuant to Section 10.3 at the end of which one or more Performance Goals are to be measured.

(oo) **Performance Share** means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Share, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(pp) **Performance Unit** means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Unit, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(qq) **Predecessor Plan** means each of the Company's 1996 Stock Option Plan, 2000 Stock Plan, 2001 Stock Plan and 2005 Equity Incentive Plan, as amended.

(rr) **Restricted Stock Award** means an Award of a Restricted Stock Bonus or a Restricted Stock Purchase Right.

(ss) **Restricted Stock Bonus** means Stock granted to a Participant pursuant to Section 8.

(tt) **Restricted Stock Purchase Right** means a right to purchase Stock granted to a Participant pursuant to Section 8.

(uu) **Restricted Stock Unit** means a right granted to a Participant pursuant to Section 9 to receive on a future date or occurrence of a future event a share of Stock or cash in lieu thereof, as determined by the Committee.

(vv) **Rule 16b-3** means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.

(ww) **SAR** or **Stock Appreciation Right** means a right granted to a Participant pursuant to Section 7 to receive payment, for each share of Stock subject to such Award, of an amount equal to the

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excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the Award over the exercise price thereof.

(xx) **Section 162(m)** means Section 162(m) of the Code.

(yy) **Section 409A** means Section 409A of the Code.

(zz) **Section 409A Deferred Compensation** means compensation provided pursuant to an Award that constitutes nonqualified deferred compensation within the meaning of Section 409A.

(aaa) **Securities Act** means the Securities Act of 1933, as amended.

(bbb) **Service** means a Participant's employment or service with the Participating Company Group, whether as an Employee, a Director or a Consultant. Unless otherwise provided by the Committee, a Participant's Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders Service or a change in the Participating Company for which the Participant renders Service, provided that there is no interruption or termination of the Participant's Service. Furthermore, a Participant's Service shall not be deemed to have been interrupted or terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, unless otherwise provided by the Committee, if any such leave taken by a Participant exceeds ninety (90) days, then on the ninety-first (91st) day following the commencement of such leave the Participant's Service shall be deemed to have terminated, unless the Participant's right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, an unpaid leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Award Agreement. A Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the business entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of and reason for such termination.

(ccc) **Stock** means the common stock of the Company, as adjusted from time to time in accordance with Section 4.4.

(ddd) **Stock Tender Exercise** means a Stock Tender Exercise as defined in Section 6.3(b)(ii).

(eee) **Subsidiary Corporation** means any present or future subsidiary corporation of the Company, as defined in Section 424(f) of the Code.

(fff) **Ten Percent Owner** means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(ggg) **Trading Compliance Policy** means the written policy of the Company pertaining to the purchase, sale, transfer or other disposition of the Company's equity securities by Directors, Officers, Employees or other service providers who may possess material, nonpublic information regarding the Company or its securities.

(hhh) **Vesting Conditions** mean those conditions established in accordance with the Plan prior to the satisfaction of which an Award or shares subject to an Award remain subject to forfeiture or a repurchase option in favor of the Company exercisable for the Participant's monetary purchase price, if any, for such shares upon the Participant's termination of Service or failure of a performance condition to be satisfied.

**2.2 Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the

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singular shall include the plural and the plural shall include the singular. Use of the term or is not intended to be exclusive, unless the context clearly requires otherwise.

### **3. ADMINISTRATION.**

**3.1 Administration by the Committee.** The Plan shall be administered by the Committee. All questions of interpretation of the Plan, of any Award Agreement or of any other form of agreement or other document employed by the Company in the administration of the Plan or of any Award shall be determined by the Committee, and such determinations shall be final, binding and conclusive upon all persons having an interest in the Plan or such Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or Award Agreement or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest therein. All expenses incurred in connection with the administration of the Plan shall be paid by the Company.

**3.2 Authority of Officers.** Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election that is the responsibility of or that is allocated to the Company herein, provided that the Officer has apparent authority with respect to such matter, right, obligation, determination or election.

**3.3 Administration with Respect to Insiders.** With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

**3.4 Committee Complying with Section 162(m).** If the Company is a publicly held corporation within the meaning of Section 162(m), the Board may establish a Committee of outside directors within the meaning of Section 162(m) to approve the grant of any Award intended to result in the payment of Performance-Based Compensation.

**3.5 Powers of the Committee.** In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

(a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock, units or monetary value to be subject to each Award;

(b) to determine the type of Award granted;

(c) to determine whether an Award granted to a Covered Employee shall be intended to result in Performance-Based Compensation;

(d) to determine the Fair Market Value of shares of Stock or other property;

(e) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with any Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the Performance Measures, Performance Period, Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of expiration of any Award, (vii) the effect of any Participant's termination of Service on any of the foregoing, and (viii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;

(f) to determine whether an Award will be settled in shares of Stock, cash, other property or in any combination thereof;

(g) to approve one or more forms of Award Agreement;

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(h) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto;

(i) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant's termination of Service;

(j) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws of, or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose residents may be granted Awards; and

(k) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law.

**3.6 Option or SAR Repricing.** Without the affirmative vote of holders of a majority of the shares of Stock cast in person or by proxy at a meeting of the stockholders of the Company at which a quorum representing a majority of all outstanding shares of Stock is present or represented by proxy, the Committee shall not approve a program providing for either (a) the cancellation of outstanding Options or SARs having exercise prices per share greater than the then Fair Market Value of a share of Stock ( *Underwater Awards* ) and the grant in substitution therefore of new Options or SARs having a lower exercise price, Full Value Awards or payments in cash, or (b) the amendment of outstanding Underwater Awards to reduce the exercise price thereof. This Section shall not be construed to apply to (i) issuing or assuming a stock option in a transaction to which Section 424(a) applies, within the meaning of Section 424 of the Code, (ii) adjustments pursuant to the assumption of or substitution for an Option or SAR in a manner that would comply with Section 409A, or (iii) an adjustment pursuant to Section 4.4.

**3.7 Indemnification.** In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, to the extent permitted by applicable law, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

## **4. SHARES SUBJECT TO PLAN.**

**4.1 Maximum Number of Shares Issuable.** Subject to adjustment as provided in Sections 4.2, 4.3 and 4.4, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be equal to nine million (9,000,000) shares and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.



**4.2 Adjustment for Unissued or Forfeited Predecessor Plan Shares.** The maximum aggregate number of shares of Stock that may be issued under the Plan as set forth in Section 4.1 shall be cumulatively increased from time to time by:

(a) the aggregate number of shares of Stock that remain available for the future grant of awards under a Predecessor Plan immediately prior to its termination as of the Effective Date;

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(b) the number of shares of Stock subject to that portion of any option or other award outstanding pursuant to a Predecessor Plan as of the Effective Date which, on or after the Effective Date, expires or is terminated or canceled for any reason without having been exercised or settled in full; and

(c) the number of shares of Stock acquired pursuant to a Predecessor Plan subject to forfeiture or repurchase by the Company for an amount not greater than the Participant's purchase price which, on or after the Effective Date, is so forfeited or repurchased, provided that for each one (1) share subject to a Full Value Award so forfeited or repurchased pursuant to the Company's 2005 Equity Incentive Plan, the maximum aggregate number of shares of Stock that may be issued under the Plan as set forth in Section 4.1 shall be increased by one and five-tenths (1.5) shares;

provided, however, that the aggregate number of shares of Stock authorized for issuance under the Predecessor Plans that may become authorized for issuance under the Plan pursuant to this Section 4.2 shall not exceed fourteen million one hundred eighty-one thousand seventy-three (14,181,073) shares.

### 4.3 Share Counting.

(a) Each share of Stock subject to an Award other than a Full Value Award shall be counted against the limit set forth in Section 4.1 as one (1) share. Each one (1) share of Stock subject to a Full Value Award granted pursuant to the Plan or forfeited or repurchased pursuant to Section 4.3(b) shall be counted for purposes of the limit set forth in Section 4.1 as one and five-tenths (1.5) shares (the **Full Value Award Ratio**).

(b) If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company for an amount not greater than the Participant's purchase price, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in cash. Upon payment in shares of Stock pursuant to the exercise of an SAR, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which the SAR is exercised. If the exercise price of an Option is paid by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant, or by means of a Net-Exercise, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which the Option is exercised. Shares withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to the exercise or settlement of Options or SARs pursuant to Section 17.2 shall not again be available for issuance under the Plan. Shares withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to the vesting or settlement of Full Value Awards pursuant to Section 17.2 shall again become available for issuance under the Plan in amount determined in accordance with the Full Value Award Ratio.

**4.4 Adjustments for Changes in Capital Structure.** Subject to any required action by the stockholders of the Company and the requirements of Sections 409A and 424 of the Code to the extent applicable, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting regular, periodic cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and kind of shares subject to the Plan and to any outstanding Awards, the Award limits set forth in Section 5.3 and Section 5.3(b), and in the exercise or purchase price per share under any outstanding Award in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as effected without receipt of consideration by



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the Company. If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to an Ownership Change Event) shares of another corporation (the *New Shares*), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to, and the exercise or purchase price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee, in its discretion. Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the exercise or purchase price per share shall be rounded up to the nearest whole cent. In no event may the exercise or purchase price, if any, under any Award be decreased to an amount less than the par value, if any, of the stock subject to such Award. The Committee in its discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate, including modification of Performance Goals, Performance Award Formulas and Performance Periods. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

**4.5 Assumption or Substitution of Awards.** The Committee may, without affecting the number of shares of Stock reserved or available hereunder, authorize the issuance or assumption of benefits under this Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization upon such terms and conditions as it may deem appropriate, subject to compliance with Section 409A and any other applicable provisions of the Code.

## **5. ELIGIBILITY, PARTICIPATION AND AWARD LIMITATIONS.**

**5.1 Persons Eligible for Awards.** Awards may be granted only to Employees, Consultants and Directors.

**5.2 Participation in the Plan.** Awards are granted solely at the discretion of the Committee. Eligible persons may be granted more than one Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

**5.3 Award Limitations.**

**(a) Incentive Stock Option Limitations.**

**(i) Maximum Number of Shares Issuable Pursuant to Incentive Stock Options.** Subject to adjustment as provided in Section 4.4, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to the exercise of Incentive Stock Options shall not exceed nine million (9,000,000) shares. The maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to all Awards other than Incentive Stock Options shall be the number of shares determined in accordance with Section 4.1, subject to adjustment as provided in Sections 4.2, 4.3 and 4.4.

**(ii) Persons Eligible.** An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation or a Subsidiary Corporation (each being an *ISO-Qualifying Corporation*). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option.

(iii) **Fair Market Value Limitation.** To the extent that options designated as Incentive Stock Options (granted under all stock plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the

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time the option with respect to such stock is granted. If the Code is amended to provide for a limitation different from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section, the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise the Option, shares issued pursuant to each such portion shall be separately identified.

(b) **Nonemployee Director Award Limits.** Subject to adjustment as provided in Section 4.4, no Nonemployee Director may be granted within any fiscal year of the Company one or more Nonemployee Director Awards for more than two hundred thousand (200,000) shares.

(c) **Section 162(m) Award Limits.** The following limits shall apply to the grant of any Award intended to qualify for treatment as Performance-Based Compensation:

(i) **Options and SARs.** Subject to adjustment as provided in Section 4.4, no Employee shall be granted within any fiscal year of the Company one or more Options or Freestanding SARs which in the aggregate are for more than four million (4,000,000) shares.

(ii) **Restricted Stock Awards and Restricted Stock Unit Awards.** Subject to adjustment as provided in Section 4.4, no Employee shall be granted within any fiscal year of the Company one or more Restricted Stock Awards or Restricted Stock Unit Awards for more than one million (1,000,000) shares.

(iii) **Performance Awards.** Subject to adjustment as provided in Section 4.4, no Employee shall be granted (1) Performance Shares which could result in such Employee receiving more than one million (1,000,000) shares for each full fiscal year of the Company contained in the Performance Period for such Award, or (2) Performance Units which could result in such Employee receiving more than two million dollars (\$2,000,000) for each full fiscal year of the Company contained in the Performance Period for such Award. No Participant may be granted more than one Performance Award for the same Performance Period.

(iv) **Cash-Based Awards and Other Stock-Based Awards.** Subject to adjustment as provided in Section 4.4, no Employee shall be granted (1) Cash-Based Awards in any fiscal year of the Company which could result in such Employee receiving more than two million dollars (\$2,000,000) for each full fiscal year of the Company contained in the Performance Period for such Award, or (2) Other Stock-Based Awards in any fiscal year of the Company which could result in such Employee receiving more than one million (1,000,000) shares for each full fiscal year of the Company contained in the Performance Period for such Award. No Participant may be granted more than one Cash-Based Award or Other Stock-Based Award for the same Performance Period.

## **6. STOCK OPTIONS.**

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 **Exercise Price.** The exercise price for each Option shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock

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Option) may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner that would qualify under the provisions of Section 409A or Section 424(a) of the Code.

**6.2 Exercisability and Term of Options.** Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; provided, however, that (a) no Option shall be exercisable after the expiration of seven (7) years after the effective date of grant of such Option, (b) no Incentive Stock Option granted to a Ten Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option and (c) no Option granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such Option (except in the event of such Employee's death, disability or retirement, upon a Change in Control, or as otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, each Option shall terminate seven (7) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions.

**6.3 Payment of Exercise Price.**

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or in cash equivalent; (ii) if permitted by the Committee and subject to the limitations contained in Section 6.3(b), by means of (1) a Cashless Exercise, (2) a Stock Tender Exercise or (3) a Net Exercise; (iii) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (iv) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) **Limitations on Forms of Consideration.**

(i) **Cashless Exercise.** A **Cashless Exercise** means the delivery of a properly executed notice of exercise together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise, including with respect to one or more Participants specified by the Company notwithstanding that such program or procedures may be available to other Participants.

(ii) **Stock Tender Exercise.** A **Stock Tender Exercise** means the delivery of a properly executed exercise notice accompanied by a Participant's tender to the Company, or attestation to the ownership, in a form acceptable to the Company of whole shares of Stock owned by the Participant having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised. A Stock Tender Exercise shall not be permitted if it would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. If required by the Company, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for a period of time required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.





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(iii) **Net Exercise.** A *Net Exercise* means the delivery of a properly executed exercise notice followed by a procedure pursuant to which (1) the Company will reduce the number of shares otherwise issuable to a Participant upon the exercise of an Option by the largest whole number of shares having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised, and (2) the Participant shall pay to the Company in cash the remaining balance of such aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued.

### **6.4 Effect of Termination of Service.**

(a) **Option Exercisability.** Subject to earlier termination of the Option as otherwise provided by this Plan and unless otherwise provided by the Committee, an Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested only during the applicable time period determined in accordance with this Section and thereafter shall terminate.

(i) **Disability.** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the date of expiration of the Option's term as set forth in the Award Agreement evidencing such Option (the *Option Expiration Date*).

(ii) **Death.** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months (or such longer or shorter period provided by the Award Agreement) after the Participant's termination of Service.

(iii) **Termination for Cause.** Notwithstanding any other provision of the Plan to the contrary, if the Participant's Service is terminated for Cause or if, following the Participant's termination of Service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of Service or act.

(iv) **Other Termination of Service.** If the Participant's Service terminates for any reason, except Disability, death or Cause, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, other than termination of Service for Cause, if the exercise of an Option within the applicable time periods set forth in Section 6.4(a) is prevented by the provisions of Section 15 below, the Option shall remain exercisable until the later of (i) thirty (30) days after the date such exercise first would no longer be prevented by such provisions or (ii) the end of the applicable time period under Section 6.4(a), but in any event no later than the Option Expiration Date.



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**6.5 Transferability of Options.** During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. An Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, an Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act or, in the case of an Incentive Stock Option, only as permitted by applicable regulations under Section 421 of the Code in a manner that does not disqualify such Option as an Incentive Stock Option.

## **7. STOCK APPRECIATION RIGHTS.**

Stock Appreciation Rights shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**7.1 Types of SARs Authorized.** SARs may be granted in tandem with all or any portion of a related Option (a ***Tandem SAR***) or may be granted independently of any Option (a ***Freestanding SAR***). A Tandem SAR may only be granted concurrently with the grant of the related Option.

**7.2 Exercise Price.** The exercise price for each SAR shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR. Notwithstanding the foregoing, an SAR may be granted with an exercise price lower than the minimum exercise price set forth above if such SAR is granted pursuant to an assumption or substitution for another stock appreciation right in a manner that would qualify under the provisions of Section 409A of the Code.

### **7.3 Exercisability and Term of SARs.**

(a) ***Tandem SARs.*** Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option. The Committee may, in its discretion, provide in any Award Agreement evidencing a Tandem SAR that such SAR may not be exercised without the advance approval of the Company and, if such approval is not given, then the Option shall nevertheless remain exercisable in accordance with its terms. A Tandem SAR shall terminate and cease to be exercisable no later than the date on which the related Option expires or is terminated or canceled. Upon the exercise of a Tandem SAR with respect to some or all of the shares subject to such SAR, the related Option shall be canceled automatically as to the number of shares with respect to which the Tandem SAR was exercised. Upon the exercise of an Option related to a Tandem SAR as to some or all of the shares subject to such Option, the related Tandem SAR shall be canceled automatically as to the number of shares with respect to which the related Option was exercised.

(b) ***Freestanding SARs.*** Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; provided, however, that (i) no Freestanding SAR shall be exercisable after the expiration of seven (7) years after the effective date of grant of such SAR and (ii) no Freestanding SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such SAR (except in the event of such

Employee's death, disability or retirement, upon a Change in Control, or as

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otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of a Freestanding SAR, each Freestanding SAR shall terminate seven (7) years after the effective date of grant of the SAR, unless earlier terminated in accordance with its provisions.

**7.4 Exercise of SARs.** Upon the exercise (or deemed exercise pursuant to Section 7.5) of an SAR, the Participant (or the Participant's legal representative or other person who acquired the right to exercise the SAR by reason of the Participant's death) shall be entitled to receive payment of an amount for each share with respect to which the SAR is exercised equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price. Payment of such amount shall be made (a) in the case of a Tandem SAR, solely in shares of Stock in a lump sum upon the date of exercise of the SAR and (b) in the case of a Freestanding SAR, in cash, shares of Stock, or any combination thereof as determined by the Committee, in a lump sum upon the date of exercise of the SAR. When payment is to be made in shares of Stock, the number of shares to be issued shall be determined on the basis of the Fair Market Value of a share of Stock on the date of exercise of the SAR. For purposes of Section 7, an SAR shall be deemed exercised on the date on which the Company receives notice of exercise from the Participant or as otherwise provided in Section 7.5.

**7.5 Deemed Exercise of SARs.** If, on the date on which an SAR would otherwise terminate or expire, the SAR by its terms remains exercisable immediately prior to such termination or expiration and, if so exercised, would result in a payment to the holder of such SAR, then any portion of such SAR which has not previously been exercised shall automatically be deemed to be exercised as of such date with respect to such portion.

**7.6 Effect of Termination of Service.** Subject to earlier termination of the SAR as otherwise provided herein and unless otherwise provided by the Committee, an SAR shall be exercisable after a Participant's termination of Service only to the extent and during the applicable time period determined in accordance with Section 6.4 (treating the SAR as if it were an Option) and thereafter shall terminate.

**7.7 Transferability of SARs.** During the lifetime of the Participant, an SAR shall be exercisable only by the Participant or the Participant's guardian or legal representative. An SAR shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Award, a Tandem SAR related to a Nonstatutory Stock Option or a Freestanding SAR shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act.

## **8. RESTRICTED STOCK AWARDS.**

Restricted Stock Awards shall be evidenced by Award Agreements specifying whether the Award is a Restricted Stock Bonus or a Restricted Stock Purchase Right and the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**8.1 Types of Restricted Stock Awards Authorized.** Restricted Stock Awards may be granted in the form of either a Restricted Stock Bonus or a Restricted Stock Purchase Right. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of or satisfaction of Vesting Conditions applicable to a Restricted Stock Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

8.2 **Purchase Price.** The purchase price for shares of Stock issuable under each Restricted Stock Purchase Right shall be established by the Committee in its discretion. No monetary payment (other than

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applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Restricted Stock Bonus, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock subject to a Restricted Stock Award.

**8.3 Purchase Period.** A Restricted Stock Purchase Right shall be exercisable within a period established by the Committee, which shall in no event exceed thirty (30) days from the effective date of the grant of the Restricted Stock Purchase Right.

**8.4 Payment of Purchase Price.** Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Restricted Stock Purchase Right shall be made (a) in cash, by check or in cash equivalent, (b) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (c) by any combination thereof.

**8.5 Vesting and Restrictions on Transfer.** Shares issued pursuant to any Restricted Stock Award may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event or as provided in Section 8.8. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to such Restricted Stock Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then satisfaction of the Vesting Conditions automatically shall be determined on the next trading day on which the sale of such shares would not violate the Trading Compliance Policy. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

**8.6 Voting Rights; Dividends and Distributions.** Except as provided in this Section, Section 8.5 and any Award Agreement, during any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares; provided, however, that if so determined by the Committee and provided by the Award Agreement, such dividends and distributions shall be subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid, and otherwise shall be paid no later than the end of the calendar year in which such dividends or distributions are paid to stockholders (or, if later, the 15th day of the third month following the date such dividends or distributions are paid to stockholders). In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.4, any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

**8.7 Effect of Termination of Service.** Unless otherwise provided by the Committee in the Award Agreement evidencing a Restricted Stock Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then (a) the Company shall have the option to repurchase for the purchase price paid by the Participant any shares acquired by the



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Participant pursuant to a Restricted Stock Purchase Right which remain subject to Vesting Conditions as of the date of the Participant's termination of Service and (b) the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Bonus which remain subject to Vesting Conditions as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

**8.8 Nontransferability of Restricted Stock Award Rights.** Rights to acquire shares of Stock pursuant to a Restricted Stock Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or the laws of descent and distribution. All rights with respect to a Restricted Stock Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **9. RESTRICTED STOCK UNITS.**

Restricted Stock Unit Awards shall be evidenced by Award Agreements specifying the number of Restricted Stock Units subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**9.1 Grant of Restricted Stock Unit Awards.** Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of a Restricted Stock Unit Award or the Vesting Conditions with respect to such Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

**9.2 Purchase Price.** No monetary payment (other than applicable tax withholding, if any) shall be required as a condition of receiving a Restricted Stock Unit Award, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock issued upon settlement of the Restricted Stock Unit Award.

**9.3 Vesting.** Restricted Stock Unit Awards may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Unit Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to the Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then the satisfaction of the Vesting Conditions automatically shall be determined on the first to occur of (a) the next trading day on which the sale of such shares would not violate the Trading Compliance Policy or (b) the last day of the calendar year in which the original vesting date occurred.

**9.4 Voting Rights, Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the

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payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Dividend Equivalent Rights, if any, shall be paid by crediting the Participant with a cash amount or with additional whole Restricted Stock Units as of

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the date of payment of such cash dividends on Stock, as determined by the Committee. The number of additional Restricted Stock Units (rounded to the nearest whole number), if any, to be credited shall be determined by dividing (a) the amount of cash dividends paid on the dividend payment date with respect to the number of shares of Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. If so determined by the Committee and provided by the Award Agreement, such cash amount or additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.4, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

**9.5 Effect of Termination of Service.** Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Restricted Stock Unit Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any Restricted Stock Units pursuant to the Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service.

**9.6 Settlement of Restricted Stock Unit Awards.** The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee in compliance with Section 409A, if applicable, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 9.4) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes, if any. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section, and such deferred issuance date(s) and amount(s) elected by the Participant shall be set forth in the Award Agreement. Notwithstanding the foregoing, the Committee, in its discretion, may provide for settlement of any Restricted Stock Unit Award by payment to the Participant in cash of an amount equal to the Fair Market Value on the payment date of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

**9.7 Nontransferability of Restricted Stock Unit Awards.** The right to receive shares pursuant to a Restricted Stock Unit Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Restricted Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

**10. PERFORMANCE AWARDS.**

Performance Awards shall be evidenced by Award Agreements in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**10.1 Types of Performance Awards Authorized.** Performance Awards may be granted in the form of either Performance Shares or Performance Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Units subject thereto, the Performance Award Formula, the Performance Goal(s) and Performance Period applicable to the Award, and the other terms, conditions and restrictions of the Award.



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**10.2 Initial Value of Performance Shares and Performance Units.** Unless otherwise provided by the Committee in granting a Performance Award, each Performance Share shall have an initial monetary value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.4, on the effective date of grant of the Performance Share, and each Performance Unit shall have an initial monetary value established by the Committee at the time of grant. The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

**10.3 Establishment of Performance Period, Performance Goals and Performance Award Formula.** In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. Unless otherwise permitted in compliance with the requirements under Section 162(m) with respect to each Performance Award intended to result in the payment of Performance-Based Compensation, the Committee shall establish the Performance Goal(s) and Performance Award Formula applicable to each Performance Award no later than the earlier of (a) the date ninety (90) days after the commencement of the applicable Performance Period or (b) the date on which 25% of the Performance Period has elapsed, and, in any event, at a time when the outcome of the Performance Goals remains substantially uncertain. Once established, the Performance Goals and Performance Award Formula applicable to a Performance Award intended to result in the payment of Performance-Based Compensation to a Covered Employee shall not be changed during the Performance Period. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s) and Performance Award Formula.

**10.4 Measurement of Performance Goals.** Performance Goals shall be established by the Committee on the basis of targets to be attained ( *Performance Targets* ) with respect to one or more measures of business or financial performance (each, a *Performance Measure* ), subject to the following:

(a) **Performance Measures.** Performance Measures shall be calculated in accordance with the Company's financial statements, or, if such measures are not reported in the Company's financial statements, they shall be calculated in accordance with generally accepted accounting principles, a method used generally in the Company's industry, or in accordance with a methodology established by the Committee prior to the grant of the Performance Award. As specified by the Committee, Performance Measures may be calculated with respect to the Company and each Subsidiary Corporation consolidated therewith for financial reporting purposes, one or more Subsidiary Corporations or such division or other business unit of any of them selected by the Committee. Unless otherwise determined by the Committee prior to the grant of the Performance Award, the Performance Measures applicable to the Performance Award shall be calculated prior to the accrual of expense for any Performance Award for the same Performance Period and excluding the effect (whether positive or negative) on the Performance Measures of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Committee, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be based upon one or more of the following, as determined by the Committee:

(i) revenue;

(ii) sales;

(iii) expenses;

(iv) operating income;

(v) gross margin;

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(vi) operating margin;

(vii) earnings before any one or more of: stock-based compensation expense, interest, taxes, depreciation and amortization;

(viii) pre-tax profit;

(ix) net operating income;

(x) net income;

(xi) economic value added;

(xii) free cash flow;

(xiii) operating cash flow;

(xiv) balance of cash, cash equivalents and marketable securities;

(xv) stock price;

(xvi) earnings per share;

(xvii) return on stockholder equity;

(xviii) return on capital;

(xix) return on assets;

(xx) return on investment;

(xxi) total stockholder return;

(xxii) employee satisfaction;

(xxiii) employee retention;

(xxiv) market share;

(xxv) customer satisfaction;

(xxvi) product development;

(xxvii) research and development expenses;

(xxviii) completion of an identified special project;

(xxix) completion of a joint venture or other corporate transaction; and

(xxx) new customer acquisition.

(b) **Performance Targets.** Performance Targets may include a minimum, maximum, target level and intermediate levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the Performance Target level attained during the applicable Performance Period. A Performance Target may be stated as an absolute value, an increase or decrease in a value, or as a value determined relative to an index, budget or other standard selected by the Committee.

#### 10.5 Settlement of Performance Awards.



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(a) ***Determination of Final Value.*** As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall certify in writing the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) ***Discretionary Adjustment of Award Formula.*** In its discretion, the Committee may, either at the time it grants a Performance Award or at any time thereafter, provide for the positive or negative

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adjustment of the Performance Award Formula applicable to a Performance Award granted to any Participant who is not a Covered Employee to reflect such Participant's individual performance in his or her position with the Company or such other factors as the Committee may determine. If permitted under a Covered Employee's Award Agreement, the Committee shall have the discretion, on the basis of such criteria as may be established by the Committee, to reduce some or all of the value of the Performance Award that would otherwise be paid to the Covered Employee upon its settlement notwithstanding the attainment of any Performance Goal and the resulting value of the Performance Award determined in accordance with the Performance Award Formula. No such reduction may result in an increase in the amount payable upon settlement of another Participant's Performance Award that is intended to result in Performance-Based Compensation.

(c) ***Effect of Leaves of Absence.*** Unless otherwise required by law or a Participant's Award Agreement, payment of the final value, if any, of a Performance Award held by a Participant who has taken in excess of thirty (30) days in unpaid leaves of absence during a Performance Period shall be prorated on the basis of the number of days of the Participant's Service during the Performance Period during which the Participant was not on an unpaid leave of absence.

(d) ***Notice to Participants.*** As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), the Company shall notify each Participant of the determination of the Committee.

(e) ***Payment in Settlement of Performance Awards.*** As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), but in any event within the Short-Term Deferral Period described in Section 16.1 (except as otherwise provided below or consistent with the requirements of Section 409A), payment shall be made to each eligible Participant (or such Participant's legal representative or other person who acquired the right to receive such payment by reason of the Participant's death) of the final value of the Participant's Performance Award. Payment of such amount shall be made in cash, shares of Stock, or a combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing a Performance Award, payment shall be made in a lump sum. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the payment to be made to the Participant pursuant to this Section, and such deferred payment date(s) elected by the Participant shall be set forth in the Award Agreement. If any payment is to be made on a deferred basis, the Committee may, but shall not be obligated to, provide for the payment during the deferral period of Dividend Equivalent Rights or interest.

(f) ***Provisions Applicable to Payment in Shares.*** If payment is to be made in shares of Stock, the number of such shares shall be determined by dividing the final value of the Performance Award by the Fair Market Value of a share of Stock determined by the method specified in the Award Agreement. Shares of Stock issued in payment of any Performance Award may be fully vested and freely transferable shares or may be shares of Stock subject to Vesting Conditions as provided in Section 8.5. Any shares subject to Vesting Conditions shall be evidenced by an appropriate Award Agreement and shall be subject to the provisions of Sections 8.5 through 8.8 above.

**10.6 Voting Rights; Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Performance Share Awards until the date of the issuance of such shares, if any (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Performance Share Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date the Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date on which the Performance Shares are settled or the date on which they are forfeited. Such Dividend Equivalent Rights, if any, shall be credited to the Participant either in cash or in the form of additional whole Performance Shares as of the date of payment of such cash dividends on Stock, as

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determined by the Committee. The number of additional Performance Shares (rounded to the nearest whole number), if any, to be so credited shall be determined by dividing (a) the amount of cash dividends paid on the dividend payment date with respect to the number of shares of Stock represented by the Performance Shares previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Dividend Equivalent Rights, if any, shall be accumulated and paid to the extent that the related Performance Shares become nonforfeitable. Settlement of Dividend Equivalent Rights may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 10.5. Dividend Equivalent Rights shall not be paid with respect to Performance Units. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.4, appropriate adjustments shall be made in the Participant's Performance Share Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Performance Share Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Performance Goals as are applicable to the Award.

**10.7 Effect of Termination of Service.** Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Performance Award, the effect of a Participant's termination of Service on the Performance Award shall be as follows:

(a) ***Death or Disability.*** If the Participant's Service terminates because of the death or Disability of the Participant before the completion of the Performance Period applicable to the Performance Award, the final value of the Participant's Performance Award shall be determined by the extent to which the applicable Performance Goals have been attained with respect to the entire Performance Period and shall be prorated based on the number of months of the Participant's Service during the Performance Period. Payment shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

(b) ***Other Termination of Service.*** If the Participant's Service terminates for any reason except death or Disability before the completion of the Performance Period applicable to the Performance Award, such Award shall be forfeited in its entirety; provided, however, that in the event of an involuntary termination of the Participant's Service, the Committee, in its discretion, may waive the automatic forfeiture of all or any portion of any such Award and determine the final value of the Performance Award in the manner provided by Section 10.7(a). Payment of any amount pursuant to this Section shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

**10.8 Nontransferability of Performance Awards.** Prior to settlement in accordance with the provisions of the Plan, no Performance Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Performance Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **11. CASH-BASED AWARDS AND OTHER STOCK-BASED AWARDS.**

Cash-Based Awards and Other Stock-Based Awards shall be evidenced by Award Agreements in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**11.1 Grant of Cash-Based Awards.** Subject to the provisions of the Plan, the Committee, at any time and from time to time, may grant Cash-Based Awards to Participants in such amounts and upon such terms and conditions, including the achievement of performance criteria, as

the Committee may determine.

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**11.2 Grant of Other Stock-Based Awards.** The Committee may grant other types of equity-based or equity-related Awards not otherwise described by the terms of this Plan (including the grant or offer for sale of unrestricted securities, stock-equivalent units, stock appreciation units, securities or debentures convertible into common stock or other forms determined by the Committee) in such amounts and subject to such terms and conditions as the Committee shall determine. Other Stock-Based Awards may be made available as a form of payment in the settlement of other Awards or as payment in lieu of compensation to which a Participant is otherwise entitled. Other Stock-Based Awards may involve the transfer of actual shares of Stock to Participants, or payment in cash or otherwise of amounts based on the value of Stock and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States.

**11.3 Value of Cash-Based and Other Stock-Based Awards.** Each Cash-Based Award shall specify a monetary payment amount or payment range as determined by the Committee. Each Other Stock-Based Award shall be expressed in terms of shares of Stock or units based on such shares of Stock, as determined by the Committee. The Committee may require the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. If the Committee exercises its discretion to establish performance criteria, the final value of Cash-Based Awards or Other Stock-Based Awards that will be paid to the Participant will depend on the extent to which the performance criteria are met. The establishment of performance criteria with respect to the grant or vesting of any Cash-Based Award or Other Stock-Based Award intended to result in Performance-Based Compensation shall follow procedures substantially equivalent to those applicable to Performance Awards set forth in Section 10.

**11.4 Payment or Settlement of Cash-Based Awards and Other Stock-Based Awards.** Payment or settlement, if any, with respect to a Cash-Based Award or an Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash, shares of Stock or other securities or any combination thereof as the Committee determines. The determination and certification of the final value with respect to any Cash-Based Award or Other Stock-Based Award intended to result in Performance-Based Compensation shall comply with the requirements applicable to Performance Awards set forth in Section 10. To the extent applicable, payment or settlement with respect to each Cash-Based Award and Other Stock-Based Award shall be made in compliance with the requirements of Section 409A.

**11.5 Voting Rights; Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Other Stock-Based Awards until the date of the issuance of such shares of Stock (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), if any, in settlement of such Award. However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Other Stock-Based Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Such Dividend Equivalent Rights, if any, shall be paid in accordance with the provisions set forth in Section 9.4. Dividend Equivalent Rights shall not be granted with respect to Cash-Based Awards. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.4, appropriate adjustments shall be made in the Participant's Other Stock-Based Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of such Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions and performance criteria, if any, as are applicable to the Award.

**11.6 Effect of Termination of Service.** Each Award Agreement evidencing a Cash-Based Award or Other Stock-Based Award shall set forth the extent to which the Participant shall have the right to retain

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such Award following termination of the Participant's Service. Such provisions shall be determined in the discretion of the Committee, need not be uniform among all Cash-Based Awards or Other Stock-Based Awards, and may reflect distinctions based on the reasons for termination, subject to the requirements of Section 409A, if applicable.

**11.7 Nontransferability of Cash-Based Awards and Other Stock-Based Awards.** Prior to the payment or settlement of a Cash-Based Award or Other Stock-Based Award, the Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. The Committee may impose such additional restrictions on any shares of Stock issued in settlement of Cash-Based Awards and Other Stock-Based Awards as it may deem advisable, including, without limitation, minimum holding period requirements, restrictions under applicable federal securities laws, under the requirements of any stock exchange or market upon which such shares of Stock are then listed and/or traded, or under any state securities laws or foreign law applicable to such shares of Stock.

## **12. NONEMPLOYEE DIRECTOR AWARDS.**

From time to time, the Board or the Committee shall set the amount(s) and type(s) of Nonemployee Director Awards that shall be granted to all Nonemployee Directors on a periodic, nondiscriminatory basis pursuant to the Plan, as well as the additional amount(s) and type(s) of Nonemployee Director Awards, if any, to be awarded, also on a periodic, nondiscriminatory basis, in consideration of one or more of the following: (a) the initial election or appointment of an individual to the Board as a Nonemployee Director, (b) a Nonemployee Director's service as Chairman or Lead Director of the Board, (c) a Nonemployee Director's service as the chairman of a committee of the Board, and (d) a Nonemployee Director's service other than as the chairman of a committee of the Board. The terms and conditions of each Nonemployee Director Award shall comply with the applicable provisions of the Plan. Subject to the limits set forth in Section 5.3(b) and the foregoing, the Board or the Committee shall grant Nonemployee Director Awards having such terms and conditions as it shall from time to time determine.

## **13. STANDARD FORMS OF AWARD AGREEMENT.**

**13.1 Award Agreements.** Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from time to time. No Award or purported Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement, which execution may be evidenced by electronic means.

**13.2 Authority to Vary Terms.** The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

## **14. CHANGE IN CONTROL.**

**14.1 Effect of Change in Control on Awards.** Subject to the requirements and limitations of Section 409A, if applicable, the Committee may provide for any one or more of the following:

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(a) ***Accelerated Vesting.*** In its discretion, the Committee may provide in the grant of any Award or at any other time may take such action as it deems appropriate to provide for acceleration of the exercisability, vesting and/or settlement in connection with a Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Participant's Service prior to, upon, or following the Change in Control, and to such extent as the Committee determines.

(b) ***Assumption, Continuation or Substitution.*** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case

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may be (the *Acquiror*), may, without the consent of any Participant, assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Stock); provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(c) **Cash-Out of Outstanding Stock-Based Awards.** The Committee may, in its discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Award denominated in shares of Stock or portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Committee) of Stock subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control, reduced (but not below zero) by the exercise or purchase price per share, if any, under such Award. In the event such determination is made by the Committee, an Award having an exercise or purchase price per share equal to or greater than the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control may be canceled without payment of consideration to the holder thereof. Payment pursuant to this Section (reduced by applicable withholding taxes, if any) shall be made to Participants in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards.

**14.2 Effect of Change in Control on Nonemployee Director Awards.** Subject to the requirements and limitations of Section 409A, if applicable, including as provided by Section 16.4(f), in the event of a Change in Control, each outstanding Nonemployee Director Award shall become immediately exercisable and vested in full and, except to the extent assumed, continued or substituted for pursuant to Section 14.1(b), shall be settled effective immediately prior to the time of consummation of the Change in Control.

**14.3 Federal Excise Tax Under Section 4999 of the Code.**

(a) **Excess Parachute Payment.** If any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an excess parachute payment under Section 280G of the Code, then, provided such election would not subject the Participant to taxation under Section 409A, the Participant may elect to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization.



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(b) **Determination by Independent Accountants.** To aid the Participant in making any election called for under Section 14.3(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an excess parachute payment to the Participant as described in Section 14.3(a), the Company shall request a determination in writing by the professional firm engaged by the Company for general tax purposes, or, if the tax firm so engaged by the Company is serving as accountant or auditor for the Acquiror, the Company will appoint a nationally recognized tax firm to make the determinations required by this Section. (the **Tax Firm** ). As soon as practicable thereafter, the Tax Firm shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Tax Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Tax Firm such information and documents as the Tax Firm may reasonably request in order to make its required determination. The Company shall bear all fees and expenses the Tax Firm charge in connection with its services contemplated by this Section.

**15. COMPLIANCE WITH SECURITIES LAW.**

The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award, or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares under the Plan shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

**16. COMPLIANCE WITH SECTION 409A.**

**16.1 Awards Subject to Section 409A.** The Company intends that Awards granted pursuant to the Plan shall either be exempt from or comply with Section 409A, and the Plan shall be so construed. The provisions of this Section 16 shall apply to any Award or portion thereof that constitutes or provides for payment of Section 409A Deferred Compensation. Such Awards may include, without limitation:

(a) A Nonstatutory Stock Option or SAR that includes any feature for the deferral of compensation other than the deferral of recognition of income until the later of (i) the exercise or disposition of the Award or (ii) the time the stock acquired pursuant to the exercise of the Award first becomes substantially vested.

(b) Any Restricted Stock Unit Award, Performance Award, Cash-Based Award or Other Stock-Based Award that either (i) provides by its terms for settlement of all or any portion of the Award at a time or upon an event that will or may occur later than the end of the Short-Term Deferral Period (as defined below) or (ii) permits the Participant granted the Award to elect one or more dates or events upon which the Award will be settled after the end of the Short-Term Deferral Period.

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Subject to the provisions of Section 409A, the term ***Short-Term Deferral Period*** means the 2 1/2 month period ending on the later of (i) the 15th day of the third month following the end of the Participant's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture or (ii) the 15th day of the third month following the end of the Company's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture. For this purpose, the term "substantial risk of forfeiture" shall have the meaning provided by Section 409A.

**16.2 Deferral and/or Distribution Elections.** Except as otherwise permitted or required by Section 409A, the following rules shall apply to any compensation deferral and/or payment elections (each, an ***Election***) that may be permitted or required by the Committee pursuant to an Award providing Section 409A Deferred Compensation:

(a) Elections must be in writing and specify the amount of the payment in settlement of an Award being deferred, as well as the time and form of payment as permitted by this Plan.

(b) Elections shall be made by the end of the Participant's taxable year prior to the year in which services commence for which an Award may be granted to the Participant.

(c) Elections shall continue in effect until a written revocation or change in Election is received by the Company, except that a written revocation or change in Election must be received by the Company prior to the last day for making the Election determined in accordance with paragraph (b) above or as permitted by Section 16.3.

**16.3 Subsequent Elections.** Except as otherwise permitted or required by Section 409A, any Award providing Section 409A Deferred Compensation which permits a subsequent Election to delay the payment or change the form of payment in settlement of such Award shall comply with the following requirements:

(a) No subsequent Election may take effect until at least twelve (12) months after the date on which the subsequent Election is made.

(b) Each subsequent Election related to a payment in settlement of an Award not described in Section 16.4(a)(ii), 16.4(a)(iii) or 16.4(a)(vi) must result in a delay of the payment for a period of not less than five (5) years from the date on which such payment would otherwise have been made.

(c) No subsequent Election related to a payment pursuant to Section 16.4(a)(iv) shall be made less than twelve (12) months before the date on which such payment would otherwise have been made.

(d) Subsequent Elections shall continue in effect until a written revocation or change in the subsequent Election is received by the Company, except that a written revocation or change in a subsequent Election must be received by the Company prior to the last day for making the subsequent Election determined in accordance the preceding paragraphs of this Section 16.3.

**16.4 Payment of Section 409A Deferred Compensation.**

(a) **Permissible Payments.** Except as otherwise permitted or required by Section 409A, an Award providing Section 409A Deferred Compensation must provide for payment in settlement of the Award only upon one or more of the following:

(i) The Participant's separation from service (as defined by Section 409A);

(ii) The Participant's becoming disabled (as defined by Section 409A);

(iii) The Participant's death;

(iv) A time or fixed schedule that is either (i) specified by the Committee upon the grant of an Award and set forth in the Award Agreement evidencing such Award or (ii) specified by the Participant in an Election complying with the requirements of Section 16.2 or 16.3, as applicable;

(v) A change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company determined in accordance with Section 409A; or

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(vi) The occurrence of an unforeseeable emergency (as defined by Section 409A).

(b) **Installment Payments.** It is the intent of this Plan that any right of a Participant to receive installment payments (within the meaning of Section 409A) shall, for all purposes of Section 409A, be treated as a right to a series of separate payments.

(c) **Required Delay in Payment to Specified Employee Pursuant to Separation from Service.** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, except as otherwise permitted by Section 409A, no payment pursuant to Section 16.4(a)(i) in settlement of an Award providing for Section 409A Deferred Compensation may be made to a Participant who is a specified employee (as defined by Section 409A) as of the date of the Participant's separation from service before the date (the **Delayed Payment Date**) that is six (6) months after the date of such Participant's separation from service, or, if earlier, the date of the Participant's death. All such amounts that would, but for this paragraph, become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(d) **Payment Upon Disability.** All distributions of Section 409A Deferred Compensation payable pursuant to Section 16.4(a)(ii) by reason of a Participant becoming disabled shall be paid in a lump sum or in periodic installments as established by the Participant's Election. If the Participant has made no Election with respect to distributions of Section 409A Deferred Compensation upon becoming disabled, all such distributions shall be paid in a lump sum upon the determination that the Participant has become disabled.

(e) **Payment Upon Death.** If a Participant dies before complete distribution of amounts payable upon settlement of an Award subject to Section 409A, such undistributed amounts shall be distributed to his or her beneficiary under the distribution method for death established by the Participant's Election upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death. If the Participant has made no Election with respect to distributions of Section 409A Deferred Compensation upon death, all such distributions shall be paid in a lump sum upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death.

(f) **Payment Upon Change in Control.** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan by reason of a Change in Control, such amount shall become payable only if the event constituting a Change in Control would also constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company within the meaning of Section 409A. Any Award which constitutes Section 409A Deferred Compensation and which would vest and otherwise become payable upon a Change in Control as a result of the failure of the Acquiror to assume, continue or substitute for such Award in accordance with Section 14.1(b) shall vest to the extent provided by such Award but shall be converted automatically at the effective time of such Change in Control into a right to receive, in cash on the date or dates such award would have been settled in accordance with its then existing settlement schedule (or as required by Section 16.4(c)), an amount or amounts equal in the aggregate to the intrinsic value of the Award at the time of the Change in Control.

(g) **Payment Upon Unforeseeable Emergency.** The Committee shall have the authority to provide in the Award Agreement evidencing any Award providing for Section 409A Deferred Compensation for payment pursuant to Section 16.4(a)(vi) in settlement of all or a portion of such Award in the event that a Participant establishes, to the satisfaction of the Committee, the occurrence of an unforeseeable emergency. In such event, the amount(s) distributed with respect to such unforeseeable emergency cannot exceed the amounts reasonably necessary to satisfy the emergency need plus amounts necessary to pay taxes reasonably anticipated as a result of such distribution(s), after taking into account the extent to which such emergency need is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by cessation of deferrals under the Award.



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All distributions with respect to an unforeseeable emergency shall be made in a lump sum upon the Committee's determination that an unforeseeable emergency has occurred. The Committee's decision with respect to whether an unforeseeable emergency has occurred and the manner in which, if at all, the payment in settlement of an Award shall be altered or modified, shall be final, conclusive, and not subject to approval or appeal.

(h) ***Prohibition of Acceleration of Payments.*** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, this Plan does not permit the acceleration of the time or schedule of any payment under an Award providing Section 409A Deferred Compensation, except as permitted by Section 409A.

(i) **No Representation Regarding Section 409A Compliance.** Notwithstanding any other provision of the Plan, the Company makes no representation that Awards shall be exempt from or comply with Section 409A. No Participating Company shall be liable for any tax, penalty or interest imposed on a Participant by Section 409A.

## **17. TAX WITHHOLDING.**

**17.1 Tax Withholding in General.** The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, to make adequate provision for, the federal, state, local and foreign taxes (including social insurance), if any, required by law to be withheld by any Participating Company with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

**17.2 Withholding in or Directed Sale of Shares.** The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of any Participating Company. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates. The Company may require a Participant to direct a broker, upon the vesting, exercise or settlement of an Award, to sell a portion of the shares subject to the Award determined by the Company in its discretion to be sufficient to cover the tax withholding obligations of any Participating Company and to remit an amount equal to such tax withholding obligations to such Participating Company in cash.

## **18. AMENDMENT, SUSPENSION OR TERMINATION OF PLAN.**

The Committee may amend, suspend or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Sections 4.2, 4.3 and 4.4), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or quotation system upon which the Stock may then be listed or quoted. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may have a materially adverse effect on any then outstanding Award without the consent of the Participant. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, the Committee may, in its sole and absolute discretion and without the consent of any Participant, amend the Plan or any Award Agreement, to take effect retroactively or

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otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Award Agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A.

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### **19. MISCELLANEOUS PROVISIONS.**

**19.1 Repurchase Rights.** Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

### **19.2 Forfeiture Events.**

(a) The Committee may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, termination of Service for Cause or any act by a Participant, whether before or after termination of Service, that would constitute Cause for termination of Service, or any accounting restatement due to material noncompliance of the Company with any financial reporting requirements of securities laws as a result of which, and to the extent that, such reduction, cancellation, forfeiture, or recoupment is required by applicable securities laws.

(b) If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, any Participant who knowingly or through gross negligence engaged in the misconduct, or who knowingly or through gross negligence failed to prevent the misconduct, and any Participant who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002, shall reimburse the Company for (i) the amount of any payment in settlement of an Award received by such Participant during the twelve- (12-) month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document embodying such financial reporting requirement, and (ii) any profits realized by such Participant from the sale of securities of the Company during such twelve- (12-) month period.

**19.3 Provision of Information.** Each Participant shall be given access to information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

**19.4 Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

**19.5 Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.4 or another provision of the Plan.



**19.6 Delivery of Title to Shares.** Subject to any governing rules or regulations, the Company shall issue or cause to be issued the shares of Stock acquired pursuant to an Award and shall deliver such shares to or for the benefit of the Participant by means of one or more of the following: (a) by delivering to the

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Participant evidence of book entry shares of Stock credited to the account of the Participant, (b) by depositing such shares of Stock for the benefit of the Participant with any broker with which the Participant has an account relationship, or (c) by delivering such shares of Stock to the Participant in certificate form.

**19.7 Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

**19.8 Retirement and Welfare Plans.** Neither Awards made under this Plan nor shares of Stock or cash paid pursuant to such Awards may be included as compensation for purposes of computing the benefits payable to any Participant under any Participating Company's retirement plans (both qualified and non-qualified) or welfare benefit plans unless such other plan expressly provides that such compensation shall be taken into account in computing a Participant's benefit.

**19.9 Beneficiary Designation.** Subject to local laws and procedures, each Participant may file with the Company a written designation of a beneficiary who is to receive any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before he or she receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. If a married Participant designates a beneficiary other than the Participant's spouse, the effectiveness of such designation may be subject to the consent of the Participant's spouse. If a Participant dies without an effective designation of a beneficiary who is living at the time of the Participant's death, the Company will pay any remaining unpaid benefits to the Participant's legal representative.

**19.10 Severability.** If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

**19.11 No Constraint on Corporate Action.** Nothing in this Plan shall be construed to: (a) limit, impair, or otherwise affect the Company's or another Participating Company's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets; or (b) limit the right or power of the Company or another Participating Company to take any action which such entity deems to be necessary or appropriate.

**19.12 Unfunded Obligation.** Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be considered unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

**19.13 Choice of Law.** Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of the Plan and each Award Agreement shall be governed by the laws of the State of California, without regard to its conflict of law rules.



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