

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

A.P. Pharma, Inc.  
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(Exact Name of Registrant as Specified in Its Charter)

Delaware 94-2875566  
-----  
(State or Other Jurisdiction of (I.R.S. Employer  
Incorporation or Organization) Identification No.)

123 Saginaw Drive, Redwood City, California 94063  
-----  
(Address of Principal Executive Offices)

2002 Equity Incentive Plan and  
-----  
Non-Qualified Stock Option Plan  
-----  
(Full Title of the Plan)

Michael O'Connell  
President and Chief Executive Officer  
A.P. Pharma, Inc.  
123 Saginaw Drive  
Redwood City, California 94063  
-----  
(Name and Address of Agent for Service)

(650) 366-2626  
-----  
(Telephone Number, Including Area Code, of Agent for Service)

Copy to:  
Richard A. Peers, Esq.  
Heller Ehrman White & McAuliffe  
275 Middlefield Road  
Menlo Park, California 94025-3506  
(650) 324-7000

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share (1)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01	750,000	\$2.11	\$1,582,500.00	\$145.59

(1) Estimated solely for the purpose of computing the amount of registration fee pursuant to Rule 457(c) under the Securities Act, as amended, based on the average of the high and low prices of the Registrant's Common Stock reported on the Nasdaq National Market on June 12, 2002.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed or to be filed with the Securities

and Exchange Commission (the "Commission") by the Registrant are incorporated by reference in this Registration Statement:

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2001;

(b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2002;

(c) The description of the Registrant's Common Stock contained in the registration statement on Form 8-A filed with the Commission on August 7, 1987 pursuant to Section 12 of the Exchange Act of 1934, as amended (the "Exchange Act"); and

(d) All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold.

#### Item 5. Interests of Named Experts and Counsel

Heller Ehrman White & McAuliffe, LLP, counsel to the Company, has rendered an opinion with respect to the legality of the Common Stock issuable under the 2002 Equity Incentive Plan and Non-Qualified Stock Plan. Julian N. Stern, the sole shareholder of a professional corporation that is a partner of Heller Ehrman White & McAuliffe, is the Secretary of the Company. Mr. Stern owns beneficially 179,635 shares and options to purchase 20,000 shares of the Company's Common Stock.

#### Item 6. Indemnification of Directors and Officers

The Registrant has the power to indemnify its officers and directors against liability for certain acts pursuant to Section 145 of the General Corporation Law of the State of Delaware. Section B of Article VI of the Registrant's Certificate of Incorporation provides:

"(1) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation, as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation. The right to indemnification conferred in this Section B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of

an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(2) Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section B shall not be exclusive of any other rights which any person may have or hereafter acquire under any statute, provisions of this Certificate of Incorporation, Bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(3) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware General Corporation Law."

Registrant maintains directors' and officers' liability insurance in the amount of \$7,000,000 which covers civil liabilities. Such insurance helps the Registrant to attract qualified officers and directors, by providing a means for the Company to pay the costs and expenses involved in the event civil litigation is brought against one of the Registrant's officers or directors.

#### Item 8. Exhibits

- 5 Opinion of Heller Ehrman White & McAuliffe LLP
- 23.1 Consent of Ernst & Young LLP, Independent Auditors
- 23.2 Consent of Heller Ehrman White & McAuliffe LLP  
(filed as part of Exhibit 5)
- 24.1 Power of Attorney (see signature page)
- 99.1 2002 Equity Incentive Plan
- 99.2 Non-Qualified Stock Plan

#### Item 9. Undertakings

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs A(1)(i) and A(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

#### SIGNATURES

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Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Redwood City, State of California, on this 13th day of June, 2002.

A.P. PHARMA, INC.

By: /s/ Michael O'Connell

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Michael O'Connell  
President and Chief  
Executive Officer

#### POWER OF ATTORNEY

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KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint Michael O'Connell and Gordon Sangster, or either of them, with full power of substitution, such person's true and lawful attorneys-in-fact and agents for such person in such person's name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same as fully, to all intents and purposes, as he or such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/S/ Michael O'Connell ----- Michael O'Connell	President and Chief Executive Officer (Principal Executive Officer)	June 13, 2002 -----
/S/ Gordon Sangster ----- Gordon Sangster	Chief Financial Officer (Principal Financial and Accounting Officer)	June 13, 2002 -----
/S/ Paul Goddard ----- Paul Goddard	Chairman of the Board of Directors	June 13, 2002 -----
/S/ Stephen Drury ----- Stephen Drury	Director	June 13, 2002 -----
/S/ Peter Riepenhausen ----- Peter Riepenhausen	Director	June 13, 2002 -----
/S/ Toby Rosenblatt ----- Toby Rosenblatt	Director	June 13, 2002 -----
/S/ Gregory Turnbull ----- Gregory Turnbull	Director	June 13, 2002 -----
/S/ Dennis Winger ----- Dennis Winger	Director	June 13, 2002 -----

INDEX TO EXHIBITS  
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Item No.	Description of Item
5	Opinion of Heller Ehrman White & McAuliffe LLP
23.1	Consent of Ernst & Young LLP, Independent Auditors
23.2	Consent of Heller Ehrman White & McAuliffe LLP (filed as part of Exhibit 5)
24.1	Power of Attorney (see page II-4)
99.1	2002 Equity Incentive Plan
99.2	Non-Qualified Stock Plan

(continued from previous page)



June 13, 2002

10008-0000

A.P. Pharma, Inc.  
123 Saginaw Drive  
Redwood City, California 94063

Registration Statement on Form S-8  
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Ladies and Gentlemen:

We have acted as counsel to A.P. Pharma, Inc., a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-8 (the "Registration Statement") which the Company proposes to file with the Securities and Exchange Commission on June 13, 2002 for the purpose of registering under the Securities Act of 1933, as amended, an aggregate of 750,000 shares of its Common Stock, par value \$.01 (the "Shares"). Of the Shares, 250,000 are issuable under the Company's Non-Qualified Stock Plan (the "Stock Plan") and 500,000 are issuable under the Company's 2002 Equity Incentive Plan (the "Equity Plan", and together with the Stock Plan, "the Plans").

We have assumed the authenticity of all records, documents and instruments submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all records, documents and instruments submitted to us as copies.

In rendering our opinion, we have examined the following records, documents and instruments:

- (a) The Certificate of Incorporation of the Company, certified by the Delaware Secretary of State as of May 29, 2002, and certified to us by an officer of the Company as being complete and in full force as of the date of this opinion;
- (b) The Bylaws of the Company certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;
- (c) A certificate of an officer of the Company (i) attaching records certified to us as constituting all records of proceedings and actions of the Board of Directors, including any committee thereof, and stockholders of the Company relating to the Shares, and the Registration Statement, and (ii) certifying as to certain factual matters;
- (d) The Registration Statement;
- (e) The Plans; and
- (f) A letter from EquiServe, LP, the Company's transfer agent, dated June 12, 2002, as to the number of shares of the Company's Common Stock that were outstanding on June 11, 2002.

This opinion is limited to the federal law of the United States of America and the General Corporation Law of the State of Delaware, and we disclaim any opinion as to the laws of any other jurisdiction. We further disclaim any opinion as to any other statute, rule, regulation, ordinance, order or other promulgation of any other jurisdiction or any regional or local governmental body or as to any related judicial or administrative opinion.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate for the purpose of this opinion, and assuming that (i) the Registration Statement becomes and remains effective during the period when the Shares are offered and issued, (ii) the full consideration stated in the Plans is paid for each Share and that such consideration in respect of each Share includes payment of cash or other lawful consideration at least equal to the par value thereof, (iii) appropriate certificates evidencing the Shares are executed and delivered by the Company, and (iv) all applicable securities laws

are complied with, it is our opinion that when issued and sold by the Company, after payment therefore in the manner provided in the Plans and the Registration Statement, the Shares will be legally issued, fully paid and nonassessable.

This opinion is rendered to you in connection with the Registration Statement and is solely for your benefit. This opinion may not be relied upon by you for any other purpose, or relied upon by any other person, firm, corporation or other entity for any purpose, without our prior written consent. We disclaim any obligation to advise you of any change of law that occurs, or any facts of which we may become aware, after the date of this opinion.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Heller Ehrman White & McAuliffe  
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Heller Ehrman White & McAuliffe

Consent of Ernst & Young LLP, Independent Auditors

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2002 Equity Incentive Plan and the Non-Qualified Stock Plan of A.P. Pharma, Inc. of our report dated February 22, 2002, with respect to the financial statements and schedule of A.P. Pharma, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2001, filed with the Securities and Exchange Commission.

/s/ Ernst & Young, LLP

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Ernst & Young, LLP

Palo Alto, California  
June 13, 2002

2002 Equity Incentive Plan  
of  
A.P. Pharma, Inc.,  
A Delaware corporation

1. Purpose of this Plan

The purpose of this 2002 Equity Incentive Plan of A.P. Pharma, Inc., a Delaware corporation (the "Company") is to enhance the long-term stockholder value of the Company by offering opportunities to eligible individuals to participate in the growth in value of the equity of the Company.

2. Definitions and Rules of Interpretation

2.1 Definitions. This Plan uses the following defined terms:

(a) "Administrator" means the Board, the Committee, or any officer or employee of the Company to whom the Board or the Committee delegates authority to administer this Plan.

(b) "Affiliate" means a "parent" or "subsidiary" (as each is defined in Section 424 of the Code) of the Company and any other entity that the Board or Committee designates as an "Affiliate" for purposes of this Plan.

(c) "Applicable Law" means any and all laws of whatever jurisdiction, within or without the United States, and the rules of any stock exchange or quotation system on which Shares are listed or quoted, applicable to the taking or refraining from taking of any action under this Plan, including the administration of this Plan and the issuance or transfer of Awards or Award Shares.

(d) "Award" means a Restricted Stock Award or Option granted in accordance with the terms of the Plan.

(e) "Award Agreement" means the document evidencing the grant of an Award.

(f) "Award Shares" means Shares covered by an outstanding Award or purchased under an Award.

(g) "Board" means the board of directors of the Company.

(h) "Change of Control" means any transaction or event that the Board specifies as a Change of Control under Section 10.4.

(i) "Code" means the Internal Revenue Code of 1986.

(j) "Committee" means a committee composed of Company Directors appointed in accordance with the Company's charter documents and Section 4.

(k) "Company Director" means a member of the Board.

(l) "Consultant" means an individual who, or an employee of any entity that, provides bona fide services to the Company or an Affiliate not in connection with the offer or sale of securities in a capital-raising transaction, but who is not an Employee.

(m) "Director" means a member of the board of directors of the Company or an Affiliate.

(n) "Divestiture" means any transaction or event that the Board specifies as a Divestiture under Section 10.5.

(o) "Employee" means a regular employee of the Company or an Affiliate, including an officer or Director who is treated as an employee in the personnel records of the Company or an Affiliate, but not individuals who are classified by the Company or an Affiliate as: (i) leased from or otherwise employed by a third party, (ii) independent contractors, or (iii) intermittent or temporary workers. The Company's or an Affiliate's classification of an individual as an "Employee" (or as not an "Employee") for purposes of this Plan shall not be altered retroactively even if that classification is changed retroactively for another purpose as a result of an audit, litigation or otherwise. A Recipient shall not cease to be an Employee due to transfers between locations of the Company, or between the Company and an Affiliate, or to any successor to the Company or an Affiliate that assumes the Recipient's Options under Section 10. Neither service as a Director nor receipt of a director's fee shall be sufficient to make a Director an "Employee".

(p) "Exchange Act" means the Securities Exchange Act of 1934.

(q) "Executive" means an individual who is subject to Section 16 of the Exchange Act or who is a "covered employee" under Section 162(m) of the Code, in either case because of the individual's relationship with the Company or an Affiliate.

(r) "Expiration Date" means, with respect to an Award, the date stated in the Award Agreement as the expiration date of the Award or, if no such date is stated in the Award Agreement, then the last day of the maximum exercise period for the Award, disregarding the effect of a Recipient's Termination or any other event that would shorten that period.

(s) "Fair Market Value" means the value of Shares as determined under Section 17.2.

(t) "Fundamental Transaction" means any transaction or event described in Section 10.3.

(u) "Grant Date" means the date the Administrator approves the grant of an Award. However, if the Administrator specifies that an Award's Grant Date is a future date or the date on which a condition is satisfied, the Grant Date for such Award is that future date or the date that the condition is satisfied.

(v) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option under Section 422 of the Code and designated as an Incentive Stock Option in the Award Agreement for that Option.

(w) "Listed Security" means any Share listed or approved for listing upon notice of issuance on a national securities exchange or other market system that meets the requirements of Section 25100(o) of the California Securities Law of 1968, as amended.

(x) "Nonstatutory Option" means any Option other than an Incentive Stock Option.

(y) "Objectively Determinable Performance Condition" shall mean a performance condition (i) that is established (x) at the time an Award is granted or (y) no later than the earlier of (1) 90 days after the beginning of the period of service to which it relates, or (2) before the elapse of 25% of the period of service to which it relates, (ii) that is uncertain of achievement at the time it is established, and (iii) the achievement of which is determinable by a third party with knowledge of the relevant facts. Examples of measures that may be used in Objectively Determinable Performance Conditions include net order dollars, net profit dollars, net profit growth, net revenue dollars, revenue growth, individual performance, earnings per share, return on assets, return on equity, and other financial objectives, objective customer satisfaction indicators and efficiency measures, each with respect to the Company and/or an individual business unit.

(z) "Officer" means an officer of the Company as defined in Rule 16a-1 adopted under the Exchange Act.

(aa) "Option" means a right to purchase Shares of the Company granted under this Plan.

(bb) "Option Price" means the price payable under an Option for Shares, not including any amount payable in respect of withholding or other taxes.

(cc) "Option Shares" means Shares covered by an outstanding Option or purchased under an Option.

(dd) "Plan" means this 2002 Equity Incentive Plan of A.P. Pharma, Inc.

(ee) "Purchase Price" means the price payable under a Restricted Stock Award for Shares, not including any amount payable in respect of withholding or other taxes.

(ff) "Qualified Domestic Relations Order" means a judgment, order, or decree meeting the requirements of Section 414(p) of the Code.

(gg) "Recipient" means: (i) a person to whom an Award has been granted, including a holder of a Substitute Award, (ii) a person to whom an Award has been transferred in accordance with all applicable requirements of Sections 6.5, 7(h) and 16, and (iii) a person who holds Option Shares subject to any right of repurchase under Section 15.2.

(hh) "Restricted Stock Award" means an offer by the Company to sell shares subject to certain restrictions pursuant to the Award Agreement as described in Section 8.

(ii) "Reverse Vesting" means, with respect to an Option, that an Option is or was fully exercisable but that, subject to a "reverse" vesting schedule, the Company has a right to repurchase the Option Shares as specified in Section 15.2(a), with the Company's right of repurchase expiring in accordance with the "forward" vesting schedule that would otherwise have applied to the Option under which the Option Shares were purchased or other vesting schedule described in the Award Agreement. With respect to a Restricted Stock Award, Reverse Vesting means that the Company has a right to repurchase the Award Shares purchased pursuant to the Restricted Stock Award, as specified in Section 15.2(a), with the Company's right of repurchase expiring in accordance with the vesting schedule in the Award Agreement.

(jj) "Rule 16b-3" means Rule 16b-3 adopted under Section 16(b) of the Exchange Act.

(kk) "Securities Act" means the Securities Act of 1933.

(ll) "Share" means a share of the common stock of the Company or other securities substituted for the common stock under Section 10.

(mm) "Substitute Option" means an Option granted in substitution for, or upon the conversion of, an option granted by another entity to purchase equity securities in the granting entity.

(nn) "Substitute Restricted Stock Award" means a Restricted Stock Award granted in substitution for, or upon the conversion of, a stock award granted by another entity to purchase equity securities in the granting entity.

(oo) "Ten Percent Stockholder" means any person who, directly or by attribution under Section 424(d) of the Code, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or of any Affiliate on the Grant Date.

(pp) "Termination" means that the Recipient has ceased to be, with or without any cause or reason, an Employee, Director or Consultant. However, unless so determined by the Administrator, "Termination" shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an Affiliate to cease being an Affiliate shall be treated as the "Termination" of that Affiliate's Employees, Directors, and Consultants.

2.2 Rules of Interpretation. Any reference to a "Section", without more, is to a Section of this Plan. Captions and titles are used for convenience in this Plan and shall not, by themselves, determine the meaning of this Plan. Except when otherwise indicated by the context, the singular includes the plural and vice versa. Any reference to a statute is also a reference to the applicable rules and regulations adopted under that statute. Any reference to a statute, rule or regulation, or to a section of a statute, rule or regulation, is a reference to that statute, rule, regulation, or section as amended from time to time, both before and after the effective date of this Plan and including any successor provisions.

### 3. Shares Subject to this Plan; Term of this Plan

3.1 Number of Award Shares. Subject to adjustment under Section 10, the maximum number of Shares that may be issued under this Plan is 500,000.

3.2 Source of Shares. Award Shares may be authorized but unissued Shares or treasury Shares. If an Award is terminated, expires, or otherwise becomes unexercisable without having been exercised in full, the unpurchased Shares that were subject to the Award shall revert to this Plan and shall again be available for future issuance under this Plan. Shares actually issued under this Plan shall not be available for regrant even if repurchased by the Company.

#### 3.3 Term of this Plan

(a) This Plan shall be effective on the date it is approved by the Board. However, no Award may be exercised unless and until the Company's stockholders approve this Plan within 12 months after the Board approves this Plan.

(b) Subject to Section 13, this Plan shall continue in effect for a period of ten years from the earlier of the date on which the Plan was adopted by the Board and the date on which the Plan was approved by the Company's stockholders.

#### 4. Administration

##### 4.1 General

(a) The Board shall have ultimate responsibility for administering this Plan. The Board may delegate certain of its responsibilities to a Committee, which shall consist of at least two members of the Board. The Board or the Committee may further delegate its responsibilities to any Employee of the Company or any Affiliate. Where this Plan specifies that an action is to be taken or a determination made by the Board, only the Board may take that action or make that determination. Where this Plan specifies that an action is to be taken or a determination made by the Committee, only the Committee may take that action or make that determination. Where this Plan references the "Administrator", the action may be taken or determination made by the Board, the Committee, or other Administrator. However, only the Board or the Committee may approve grants of Awards to Executives, and an Administrator other than the Board or the Committee may grant Awards only within guidelines established by the Board or Committee. Moreover, all actions and determinations by any Administrator are subject to the provisions of this Plan.

(b) So long as the Company has registered and outstanding a class of equity securities under Section 12 of the Exchange Act, the Committee shall consist of Company Directors who are "Non-Employee Directors" as defined in Rule 16b-3 and, after the expiration of any transition period permitted by Treasury Regulations Section 1.162-27(h)(3), who are "outside directors" as defined in Section 162(m) of the Code.

4.2 Authority of Administrator. Subject to the other provisions of this Plan, the Administrator shall have the authority:

- (a) to grant Awards, including Substitute Awards;
- (b) to determine the Fair Market Value of Shares;
- (c) to determine the Option Price and the Purchase Price under Awards;
- (d) to select the Recipients;
- (e) to determine the times Awards are granted;
- (f) to determine the number of Shares subject to each Award;
- (g) to determine the types of payment that may be used to purchase Award Shares;
- (h) to determine the types of payment that may be used to satisfy withholding tax obligations;
- (i) to determine the other terms of each Award, including but not limited to the time or times at which Awards may be exercised, whether and under what conditions an Award is assignable, and whether an Option is a Nonstatutory Option or an Incentive Stock Option;
- (j) to modify or amend any Award;
- (k) to authorize any person to sign any Award Agreement or other document related
- (l) to this Plan on behalf of the Company;
- (m) to determine the form of any Award Agreement or other document related to this Plan, and whether that document, including signatures, may be in electronic form;
- (n) to interpret this Plan and any Award Agreement or document related to this Plan;
- (o) to correct any defect, remedy any omission, or reconcile any inconsistency in this Plan, any Award Agreement or any other document related to this Plan;
- (p) to adopt, amend, and revoke rules and regulations under this Plan, including rules and regulations relating to sub-plans and Plan addenda;
- (q) to adopt, amend, and revoke rules and procedures relating to the operation and administration of this Plan to accommodate non-U.S. Recipients and the requirements of Applicable Law such as: (i) rules and procedures regarding the conversion of local currency, withholding procedures

and the handling of stock certificates to comply with local practice and requirements, and (ii) sub-plans and Plan addenda for non-U.S. Recipients; and

(r) to make all other determinations the Administrator deems necessary or advisable for the administration of this Plan.

4.3 Scope of Discretion. Subject to the specific provisions and specific limitations of this Plan, as well as all rights conferred on specific Recipients by Award Agreements and other agreements, (i) on all matters for which this Plan confers the authority, right or power on the Board, the Committee, or other Administrator to make decisions, that body may make those decisions in its sole and absolute discretion and (ii) in making those decisions, the Board, Committee or other Administrator need not treat all persons eligible to receive Awards, all Recipients, all Awards or all Award Shares the same way.

## 5. Persons Eligible to Receive Awards

5.1 Eligible Individuals. Awards (including Substitute Awards) may be granted to, and only to, Employees, Directors and Consultants, including prospective Employees, Directors and Consultants conditioned on the beginning of their service for the Company or an Affiliate.

### 5.2 Section 162(m) Limitation.

(a) Options. So long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code: (a) no Employee or prospective Employee may be granted one or more Options within any fiscal year of the Company to purchase more than 250,000 Shares under Options, subject to adjustment under Section 10, and (b) Options may be granted to an Executive only by the Committee (and, notwithstanding Section 4.1(a), not by the Board). If an Option is cancelled without being exercised or if the Option Price of an Option is reduced, that cancelled or repriced Option shall continue to be counted against the limit on Shares under this Section 5.2.

(b) Restricted Stock Awards. Any Restricted Stock Award intended as "qualified performance-based compensation" within the meaning of Section 162(m) of the Code must vest or become exercisable contingent on the achievement of one or more Objectively Determinable Performance Conditions, the Restricted Stock Award may be granted only by the Committee, and the material terms of the Award, including the maximum amount of the Award and the Award formula, must be approved by the stockholders of the Company before the Award Shares under such Restricted Stock Award are issued.

## 6. Terms and Conditions of Options

The following rules apply to all Options:

6.1 Price. No Option intended as "qualified incentive-based compensation" within the meaning of Section 162(m) of the Code may have an Option Price less than 100% of the Fair Market Value of the Shares on the Grant Date. In no event will the Option Price of any Option be less than the par value of the Shares issuable under the Option if that is required by Applicable Law.

6.2 Term. No Option shall be exercisable after its Expiration Date. No Option may have an Expiration Date that is more than ten years after its Grant Date.

6.3 Vesting. Options shall be exercisable: (a) on the Grant Date, or (b) in accordance with a schedule related to the Grant Date, the date the Recipient's directorship, employment or consultancy begins, or a different date specified in the Option Agreement. If so provided in the Option Agreement, an Option may be exercisable subject to the application of Reverse Vesting to the Option Shares.

### 6.4 Form of Payment.

(a) The Administrator shall determine the acceptable form and method of payment for exercising an Option.

(b) Acceptable forms of payment for all Option Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.

(c) In addition, the Administrator may permit payment to be made by any of the following methods:

(i) other Shares, or the designation of other Shares, which

(A) in the case of Shares acquired upon exercise of an option (whether or not under this Plan) have been owned by the Recipient for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the Option Price of the Shares as to which the Option is being exercised;

(ii) provided that a public market exists for the Shares, through a "same day sale" commitment from the Recipient and a broker-dealer that is a member of the National Association of Securities Dealers (an "NASD Dealer") under which the Recipient irrevocably instructs the NASD Dealer promptly to forward an amount equal to the Option Price directly to the Company (a "Cashless Exercise").

(iii) one or more full recourse promissory notes bearing interest at a fair market value rate that is at least sufficient to avoid imputation of interest under Sections 483, 1274 and 7872 of the Code and with such other terms as the Administrator specifies, except that Consultants may not purchase Shares with a promissory note unless the note is adequately secured by collateral other than the Shares, the portion of the Option Price equal to the par value of the Shares must be paid in cash or other lawful consideration, other than the note, if that is required by Applicable Law, and the Company shall at all times comply with any applicable margin rules of the Federal Reserve; and

(iv) any combination of the methods of payment permitted by any paragraph of this Section 6.4.

6.5 Nonassignability of Options. Except as set forth in any Option Agreement, no Option shall be assignable or otherwise transferable by the Recipient except by will or by the laws of descent and distribution. However, Options may be transferred and exercised in accordance with a Qualified Domestic Relations Order.

6.6 Substitute Options. The Board may cause the Company to grant Substitute Options in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Any such substitution shall be effective when the acquisition closes. Substitute Options may be Nonstatutory Options or Incentive Stock Options. Unless and to the extent specified otherwise by the Board, Substitute Options shall have the same terms and conditions as the options they replace, except that (subject to Section 10) Substitute Options shall be Options to purchase Shares rather than equity securities of the granting entity and shall have an Option Price that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

## 7. Incentive Stock Options

The following rules apply only to Incentive Stock Options and only to the extent these rules are more restrictive than the rules that would otherwise apply under this Plan. With the consent of the Recipient, or where this Plan provides that an action may be taken notwithstanding any other provision of this Plan, the Administrator may deviate from the requirements of this Section, notwithstanding that any Incentive Stock Option modified by the Administrator will thereafter be treated as a Nonstatutory Option.

(a) The Expiration Date of an Incentive Stock Option shall not be later than ten years from its Grant Date, with the result that no Incentive Stock Option may be exercised after the expiration of ten years from its Grant Date.

(b) No Incentive Stock Option may be granted more than ten years from the date this Plan was approved by the Board.

(c) Options intended to be incentive stock options under Section 422 of the Code that are granted to any single Recipient under all incentive stock option plans of the Company and its Affiliates, including incentive stock options granted under this Plan, may not vest at a rate of more than \$100,000 in Fair Market Value of stock (measured on the grant dates of the options) during any calendar year. For this purpose, an option vests with respect to a given share of stock the first time its holder may purchase that share, notwithstanding any right of the Company to repurchase that share. Unless the Administrator specifies otherwise in the related agreement governing the option, this vesting limitation shall be applied by, to the extent necessary to satisfy this \$100,000 rule, treating certain stock options that were intended to be incentive stock options under Section 422 of the Code as Nonstatutory Options. The stock options or portions of stock options to be reclassified as Nonstatutory Options are those with the highest option prices, whether granted under this Plan or any other equity compensation plan of the Company or any Affiliate that permits that treatment. This Section 7(c) shall not cause an Incentive Stock Option to

vest before its original vesting date or cause an Incentive Stock Option that has already vested to cease to be vested.

(d) In order for an Incentive Stock Option to be exercised for any form of payment other than those described in Section 6.4(b), that right must be stated in the Option Agreement relating to that Incentive Stock Option.

(e) Any Incentive Stock Option granted to a Ten Percent Stockholder, must have an Expiration Date that is not later than five years from its Grant Date, with the result that no such Option may be exercised after the expiration of five years from the Grant Date.

(f) The Option Price of an Incentive Stock Option shall never be less than the Fair Market Value of the Shares at the Grant Date. The Option Price for the Shares covered by an Incentive Stock Option granted to a Ten Percent Stockholder shall never be less than 110% of the Fair Market Value of the Shares at the Grant Date.

(g) Incentive Stock Options may be granted only to Employees. If a Recipient changes status from an Employee to a Consultant, that Recipient's Incentive Stock Options become Nonstatutory Options if not exercised within the time period described in Section 7(i).

(h) No rights under an Incentive Stock Option may be transferred by the Recipient, other than by will or the laws of descent and distribution. During the life of the Recipient, an Incentive Stock Option may be exercised only by the Recipient. The Company's compliance with a Qualified Domestic Relations Order, or the exercise of an Incentive Stock Option by a guardian or conservator appointed to act for the Recipient, shall not violate this Section 7(h).

(i) An Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, but is not exercised within, the three-month period beginning with the Recipient's Termination for any reason other than the Recipient's death or disability (as defined in Section 22(c) of the Code). In the case of Termination due to death or disability, an Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, but is not exercised within, one year after the Recipient's Termination.

## 8. Restricted Stock Awards

The following rules apply to all Restricted Stock Awards:

(a) Price; Payment. The Purchase Price for the Award Shares issuable under a Restricted Stock Award shall be determined by the Administrator; provided that in no event shall such Purchase Price be less than the par value of the Award Shares issuable under the Restricted Stock Award.

(b) Term. No Restricted Stock Award shall be exercisable after its Expiration Date. No Restricted Stock Award may have an Expiration Date that is more than ten years after its Grant Date.

(c) Vesting. Restricted Stock Awards shall be exercisable: (a) on the Grant Date, or (b) in accordance with a schedule related to the Grant Date, the date the Recipient's directorship, employment or consultancy begins, or a different date specified in the Award Agreement.

(d) Restriction Period. Subject to this Plan and the Award Agreement, during a period set by the Administrator, commencing with the Grant Date of the Restricted Stock Award and ending not less than three (3) years and not more than ten (10) years from such Grant Date, the Recipient shall not be permitted to sell, assign, transfer, pledge or otherwise encumber the Award Shares of a Restricted Stock Award. Within these limits, the Administrator may provide for the lapse of such restrictions in installments, but, subject to Sections 10.3 and 10.4, may not accelerate or waive such restrictions.

(e) Right of Repurchase. If so provided in the Award Agreement, Award Shares acquired pursuant to a Restricted Stock Award may be subject to Reverse Vesting.

(f) Form of Payment. The Administrator shall determine the acceptable form and method of payment for exercising a Restricted Stock Award.

(i) Acceptable forms of payment for all Award Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.

(ii) In addition, the Administrator may permit payment to be made by any of the methods permitted with respect to the exercise of Options pursuant to Section 6.4.

(g) Nonassignability of Restricted Stock Awards. Except as set forth in any Award Agreement, no Restricted Stock Award shall be assignable or otherwise transferable by the Recipient except by will or by the laws of descent and distribution. However, Restricted Stock Awards may be transferred and exercised in accordance with a Qualified Domestic Relations Order.

(h) Substitute Restricted Stock Award. The Board may cause the Company to grant Substitute Restricted Stock Awards in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Unless and to the extent specified otherwise by the Board, Substitute Restricted Stock Awards shall have the same terms and conditions as the options they replace, except that (subject to Section 10) Substitute Restricted Stock Awards shall be Restricted Stock Awards to purchase Shares rather than equity securities of the granting entity and shall have a Purchase Price that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

## 9. Exercise of Awards

9.1 In General. An Award shall be exercisable in accordance with this Plan, the Award Agreement under which it is granted, and as prescribed by the Administrator.

9.2 Time of Exercise. Options and Restricted Stock Awards shall be considered exercised when the Company receives: (a) written notice of exercise from the person entitled to exercise the Option or Restricted Stock Award, (b) full payment, or provision for payment, in a form and method approved by the Administrator, for the Shares for which the Option or Restricted Stock Award is being exercised, and (c) with respect to Nonstatutory Options, payment, or provision for payment, in a form approved by the Administrator, of all applicable withholding taxes due upon exercise. An Award may not be exercised for a fraction of a Share.

9.3 Issuance of Award Shares. The Company shall issue Award Shares in the name of the person properly exercising the Award. If the Recipient is that person and so requests, the Award Shares shall be issued in the name of the Recipient and the Recipient's spouse. The Company shall endeavor to issue Award Shares promptly after an Award is exercised. However, until Award Shares are actually issued, as evidenced by the appropriate entry on the stock books of the Company or its transfer agent, no right to vote or receive dividends or other distributions, and no other rights as a stockholder, shall exist with respect to the Award Shares, even though the Recipient has completed all the steps necessary to exercise the Award. No adjustment shall be made for any dividend, distribution, or other right for which the record date precedes the date the Award Shares are issued, except as provided in Section 10.

## 9.4 Termination

(a) In General. Except as provided by the Administrator, including in an Award Agreement, and as otherwise provided in Sections 9.4(b), (c), (d), (e), (f) and (g), after a Recipient's Termination, the Recipient's Awards shall be exercisable to the extent (but only to the extent) they are vested on the date of that Termination and only during the period ending three months after the Termination, but in no event after the Expiration Date. To the extent the Recipient does not exercise an Award within the time specified for exercise, the Award shall automatically terminate. With respect to Restricted Stock Awards, except to the extent otherwise provided by the Administrator, including in the Award Agreement and in accordance with Section 10, upon termination of a Recipient's employment for any reason during the restriction period provided for in Section 8(d), all Award Shares of a Restricted Stock Award still subject to such restriction period shall be forfeited by the Recipient and to the extent previously purchased by the Recipient shall be repurchased by the Company for an amount equal to the original Purchase Price.

(b) Leaves of Absence. Unless otherwise provided in the Award Agreement, no Award may be exercised more than three months after the beginning of a leave of absence, other than a personal or medical leave approved by the Administrator with employment guaranteed upon return. Awards shall not continue to vest during a leave of absence, other than an approved personal or medical leave with employment guaranteed upon return.

(c) Death or Disability. Unless otherwise provided in the Award Agreement, if a Recipient's Termination is due to death or disability (as

determined by the Administrator with respect to all Awards other than Incentive Stock Options and as defined by Section 22(e) of the Code with respect to Incentive Stock Options), all Awards of that Recipient to the extent exercisable at the date of that Termination may be exercised for one year after that Termination, but in no event after the Expiration Date. In the case of Termination due to death, an Award may be exercised as provided in Section 16. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for the Recipient and been granted this authority as part of that appointment, that guardian or conservator may exercise the Award on behalf of the Recipient. In the case of a Recipient who dies or become disabled within three months after Termination, if the Termination was not due to Cause, the Recipient's Awards may be exercised for one year after that Termination. To the extent an Award is not so exercised within the time specified for its exercise, the Award shall automatically terminate.

(d) Divestiture. If a Recipient's Termination is due to a Divestiture, the Board may take any one or more of the actions described in Section 10.3 or 10.4.

(e) Retirement. Unless otherwise provided in the Award Agreement by the Administrator, if a Recipient's Termination is due to the Recipient's retirement in accordance with the Company's or an Affiliate's retirement policy, all Awards of that Recipient to the extent exercisable at the Recipient's date of retirement may be exercised for one year after the Recipient's date of retirement, but in no event after the Expiration Date. To the extent the Recipient does not exercise an Option within the time specified for exercise, the Award shall automatically terminate.

(f) Severance Programs. Unless otherwise provided in the Award Agreement by the Administrator, if a Recipient's Termination results from participation in a voluntary severance incentive program of the Company or an Affiliate approved by the Board, all Awards of that Employee to the extent exercisable at the time of that Termination shall be exercisable for one year after the Recipient's Termination, but in no event after the Expiration Date. If the Recipient does not exercise an Award within the time specified for exercise, the Award shall automatically terminate.

(g) Termination for Cause. If a Recipient's Termination is due to cause, all of the Recipient's Awards shall automatically terminate and cease to be exercisable at the time of Termination and all Awards exercised after the first event constituting cause may be rescinded by the Administrator. "Cause" means dishonesty, fraud, misconduct, disclosure or misuse of confidential information, conviction of, or a plea of guilty or no contest to, a felony or similar offense, habitual absence from work for reasons other than illness, or intentional conduct that could cause significant injury to the Company or an Affiliate, in each case as determined by the Administrator.

(h) Reverse Vesting. Under any circumstances stated in this Section 9.4 in which all unvested Options of a Recipient immediately vest, the Company's repurchase rights shall lapse on all Option Shares held by that Recipient that are subject to Reverse Vesting.

(i) Consulting or Employment Relationship. Nothing in this Plan or in any Award Agreement, and no Award or the fact that Award Shares remain subject to repurchase rights, shall: (a) interfere with or limit the right of the Company or any Affiliate to terminate the employment or consultancy of any Recipient at any time, whether with or without cause or reason, and with or without the payment of severance or any other compensation or payment, or (b) interfere with the application of any provision in any of the Company's or any Affiliate's charter documents or Applicable Law relating to the election, appointment, term of office, or removal of a Director.

## 10. Certain Transactions and Events

10.1 In General. Except as specifically provided in this Section 10, no change in the capital structure of the Company, merger, sale or other disposition of assets or a subsidiary, change of control, issuance by the Company of shares of any class of securities convertible into shares of any class, conversion of securities, or other transaction or event shall require or be the occasion for any adjustments of the type described in this Section 10.

10.2 Changes in Capital Structure. In the event of any stock split, reverse stock split, recapitalization, combination or reclassification of stock, stock dividend, spin-off, or similar change to the capital structure of the Company (not including a Fundamental Transaction or Change of Control), the Board shall make whatever adjustments it concludes are appropriate to: (a) the number and type of Awards that may be granted under this Plan, (b) the number and type of Options that may be granted to any individual under this Plan, (c) the Purchase Price of any Restricted Stock

Award, (d) the Option Price and number and class of securities issuable under each outstanding Option, and (e) the repurchase price of any securities substituted for Option Shares that are subject to repurchase rights. The specific adjustments shall be determined by the Board in its sole and absolute discretion. Unless the Board specifies otherwise, any securities issuable as a result of any such adjustment shall be rounded to the next lower whole security.

10.3 Fundamental Transactions. If the Company merges with another entity in a transaction in which the Company is not the surviving entity or if, as a result of any other transaction or event, other securities are substituted for the Shares or Shares may no longer be issued (each a "Fundamental Transaction"), then, notwithstanding any other provision of this Plan, the Board shall do one or more of the following contingent on the closing or completion of the Fundamental Transaction: (a) arrange for the substitution of options or other compensatory awards on equity securities other than Shares (including, if appropriate, equity securities of an entity other than the Company) in exchange for Awards, (b) accelerate the vesting and termination of outstanding Awards, in whole or in part, so that Awards can be exercised before or otherwise in connection with the closing or completion of the transaction or event but then terminate, (c) cancel Awards in exchange for cash payments to Recipients, (d) either arrange for any repurchase rights of the Company with respect to Award Shares to apply to the securities issued in substitution for Shares or terminate repurchase rights on Award Shares. The Board need not adopt the same rules for each Award or each Recipient.

10.4 Changes of Control. The Board may also, but need not, specify that other transactions or events constitute a "Change of Control". The Board may do that either before or after the transaction or event occurs. Examples of transactions or events that the Board may treat as Changes of Control are: (a) the Company or an Affiliate is a party to a merger, consolidation, amalgamation, or other transaction in which the beneficial stockholders of the Company, immediately before the transaction, beneficially own securities representing 50% or less of the total combined voting power or value of the Company immediately after the transaction, (b) any person or entity, including a "group" as contemplated by Section 13(d)(3) of the Exchange Act, acquires securities holding 30% or more of the total combined voting power or value of the Company, or (c) as a result of or in connection with a contested election of Company Directors, the persons who were Company Directors immediately before the election cease to constitute a majority of the Board. In connection with a Change of Control, notwithstanding any other provision of this Plan, the Board may take any one or more of the actions described in Section 10.3. In addition, the Board may extend the date for the exercise of Awards (but not beyond their original Expiration Date). The Board need not adopt the same rules for each Award or each Recipient.

10.5 Divestiture. If the Company or an Affiliate sells or otherwise transfers equity securities of an Affiliate to a person or entity other than the Company or an Affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board, in its sole and absolute discretion, may specify that such transaction or event constitutes a "Divestiture". In connection with a Divestiture, notwithstanding any other provision of this Plan, the Board may take one or more of the actions described in Section 10.3 or 10.4 with respect to Awards or Award Shares held by, for example, Employees, Directors or Consultants for whom that transaction or event results in a Termination. The Board need not adopt the same rules for each Award or each Recipient.

10.6 Dissolution. If the Company adopts a plan of dissolution, the Board may, in its sole and absolute discretion, cause Awards to be fully vested and exercisable (but not after their Expiration Date) before the dissolution is completed but contingent on its completion and may cause the Company's repurchase rights on Award Shares to lapse upon completion of the dissolution. To the extent not exercised before the earlier of the completion of the dissolution or their Expiration Date, Awards shall terminate just before the dissolution is completed. The Board need not adopt the same rules for each Award or each Recipient.

10.7 Cut-Back to Preserve Benefits. If the Administrator determines that the net after-tax amount to be realized by any Recipient, taking into account any accelerated vesting, termination of repurchase rights, or cash payments to that Recipient in connection with any transaction or event addressed in this Section 10 would be greater if one or more of those steps were not taken with respect to that Recipient's Awards or Award Shares, then and to the extent determined by the Administrator, one or more of those steps shall not be taken.

## 11. Withholding and Tax Reporting

### 11.1 Tax Withholding Alternatives

(a) General. Whenever Award Shares are issued or become free of restrictions, the Company may require the Recipient to remit to the Company an amount sufficient to satisfy any applicable tax withholding requirement, whether the related tax is imposed on the Recipient or the Company. The Company shall have no obligation to deliver Award Shares or release Award Shares from an escrow until the Recipient has satisfied those tax withholding obligations. Whenever payment in satisfaction of Awards is made in cash, the payment will be reduced by an amount sufficient to satisfy all tax withholding requirements.

(b) Method of Payment. The Recipient shall pay any required withholding using the forms of consideration described in Section 6.4(b), except that, in the discretion of the Administrator, the Company may also permit the Recipient to use any of the forms of payment described in Section 6.4(c). The Administrator may also permit Award Shares to be withheld to pay required withholding. If the Administrator permits Award Shares to be withheld, the Fair Market Value of the Award Shares withheld shall not exceed the amount determined by the applicable minimum statutory withholding rates, and shall be determined as of the date that the amount of tax to be withheld or tendered for this purpose is to be determined.

11.2 Reporting of Dispositions. Any holder of Option Shares acquired under an Incentive Stock Option shall promptly notify the Administrator in writing of the sale or other disposition of any of those Option Shares if the disposition occurs during: (a) the longer of two years after the Grant Date of the Incentive Stock Option and one year after the date the Incentive Stock Option was exercised, or (b) such other period as the Administrator has established.

## 12. Compliance with Law

12.1 Applicable Law. The grant of Awards and the issuance and subsequent transfer of Award Shares shall be subject to compliance with all Applicable Law, including all applicable securities laws. Awards may not be exercised, and Award Shares may not be transferred, in violation of Applicable Law. Thus, for example, Awards may not be exercised unless: (a) a registration statement under the Securities Act is then in effect with respect to the related Award Shares, or (b) in the opinion of legal counsel to the Company, those Award Shares may be issued in accordance with an applicable exemption from the registration requirements of the Securities Act and any other applicable securities laws. The failure or inability of the Company to obtain from any regulatory body the authority considered by the Company's legal counsel to be necessary or useful for the lawful issuance of any Award Shares or their subsequent transfer shall relieve the Company of any liability for failing to issue those Award Shares or permitting their transfer. As a condition to the exercise of any Award or the transfer of any Award Shares, the Company may require the Recipient to satisfy any requirements or qualifications that may be necessary or appropriate to comply with or evidence compliance with any Applicable Law.

## 13. Amendment or Termination of this Plan or Outstanding Awards

13.1 Amendment and Termination. The Board may at any time amend, suspend, or terminate this Plan.

13.2 Stockholder Approval. The Company shall obtain the approval of the Company's stockholders for any amendment to this Plan if stockholder approval is necessary or desirable to comply with any Applicable Law or with the requirements applicable to the grant of Awards intended to be Incentive Stock Options. The Board may also, but need not, require that the Company's stockholders approve any other amendments to this Plan.

13.3 Effect. No amendment, suspension, or termination of this Plan, and no modification of any Award even in the absence of an amendment, suspension, or termination of this Plan, shall impair any existing contractual rights of any Recipient unless the affected Recipient consents to the amendment, suspension, termination, or modification. However, no such consent shall be required if the Administrator determines, in its sole and absolute discretion, that the amendment, suspension, termination, or modification: (a) is required or advisable in order for the Company, the Plan or the Award to satisfy Applicable Law or to meet the requirements of any accounting standard; or (b) in connection with any transaction or event described in Section 10, is in the best interests of the Company or its stockholders. The Administrator may, but need not, take the tax consequences to affected Recipients into consideration in acting under the preceding sentence. Termination of this Plan shall not affect the Administrator's ability to exercise the powers granted to it under this Plan with respect to Awards granted before the termination, or Award Shares issued under such Awards, even if those Award Shares are issued after the termination.

## 14. Reserved Rights

14.1 Nonexclusivity of this Plan. This Plan shall not limit the power of the Company or any Affiliate to adopt other incentive arrangements including, for example, the grant or issuance of stock options, stock, or other equity-based rights under other plans or independently of any plan.

14.2 Unfunded Plan. This Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Recipients, any such accounts will be used merely as a convenience. The Company shall not be required to segregate any assets on account of this Plan, the grant of Awards, or the issuance of Award Shares. The Company and the Administrator shall not be deemed to be a trustee of stock or cash to be awarded under this Plan. Any obligations of the Company to any Recipient shall be based solely upon contracts entered into under this Plan, such as Award Agreements. No such obligation shall be deemed to be secured by any pledge or other encumbrance on any assets of the Company. Neither the Company nor the Administrator shall be required to give any security or bond for the performance of any such obligation.

## 15. Special Arrangements Regarding Award Shares

15.1 Escrows and Pledges. To enforce any restrictions on Award Shares including restrictions related to Reverse Vesting, the Administrator may require their holder to deposit the certificates representing Award Shares, with stock powers or other transfer instruments approved by the Administrator endorsed in blank, with the Company or an agent of the Company to hold in escrow until the restrictions have lapsed or terminated. The Administrator may also cause a legend or legends referencing the restrictions to be placed on the certificates. Any Recipient who delivers a promissory note as partial or full consideration for the purchase of Award Shares will be required to pledge and deposit, with the Company, some or all of the Award Shares as collateral to secure the payment of the note. However, the Administrator may require or accept other or additional forms of collateral to secure the note and, in any event, the Company will have full recourse against the maker of the note, notwithstanding any pledge or other collateral, unless stated otherwise in the Award Agreement and the note.

### 15.2 Repurchase Rights

(a) Reverse Vesting. If an Option or Restricted Stock Award is subject to Reverse Vesting, the Company shall have the right, during the seven months after the Recipient's Termination, to repurchase any or all of the Award Shares that were unvested as of the date of that Termination, for a price equal to the lower of: (i) the Option Price or Purchase Price for such Shares, minus the amount of any cash dividends paid or payable with respect to the Award Shares for which the record date precedes the repurchase, and (ii) the Fair Market Value of those Option Shares as of the date of the Termination. The repurchase price shall be paid in cash or, if the Option Shares were purchased in whole or in part for a promissory note, cancellation of indebtedness under that note, or a combination of those means. The Company may assign this right of repurchase.

(b) Procedure. The Company or its assignee may choose to give the Recipient a written notice of exercise of its repurchase rights under this Section 15.2. However, the Company's failure to give such a notice shall not affect its rights to repurchase Award Shares. The Company must, however, tender the repurchase price during the period specified in this Section 15.2 for exercising its repurchase rights in order to exercise such rights.

15.3 Market Standoff. If requested by the Company or a representative of its underwriters in connection with a public offering of any securities of the Company registered under the Securities Act, Recipients or certain Recipients shall be prohibited from selling some or all of their Award Shares during a period not to exceed 180 days after the effective date of any registration statement of the Company.

15.4 Dividends. Dividends on Award Shares that are subject to any restrictions, including Reverse Vesting, shall be subject to the same restriction, including those set forth in this Section 15, as the Award Shares on which the dividends were paid.

## 16. Beneficiaries

A Recipient may file a written designation of one or more beneficiaries who are to receive the Recipient's rights under the Recipient's Awards after the Recipient's death. A Recipient may change such a designation at any time by written notice. If a Recipient designates a beneficiary, the beneficiary may exercise the Recipient's Awards after the Recipient's death. If a Recipient dies when the Recipient has no living beneficiary designated under this Plan, the Company shall allow the executor or administrator of the Recipient's estate to exercise the Award or, if there is none, the person

entitled to exercise the Option under the Recipient's will or the laws of descent and distribution. In any case, no Award may be exercised after its Expiration Date.

## 17. Miscellaneous

17.1 Governing Law. This Plan and all determinations made and actions taken under this Plan shall be governed by the substantive laws, but not the choice of law rules, of the State of Delaware.

17.2 Determination of Value. Fair Market Value shall be determined as follows:

(a) Listed Stock. If the Shares are traded on any established stock exchange or quoted on a national market system, Fair Market Value shall be the closing sales price for the Shares as quoted on that stock exchange or system for the date the value is to be determined (the "Value Date") as reported in The Wall Street Journal or a similar publication. If no sales are reported as having occurred on the Value Date, Fair Market Value shall be that closing sales price for the last preceding trading day on which sales of Shares are reported as having occurred. If no sales are reported as having occurred during the five trading days before the Value Date, Fair Market Value shall be the closing bid for Shares on the Value Date. If Shares are listed on multiple exchanges or systems, Fair Market Value shall be based on sales or bids on the primary exchange or system on which Shares are traded or quoted.

17.3 Reservation of Shares. During the term of this Plan, the Company will at all times reserve and keep available such number of Shares as are still issuable under this Plan.

17.4 Electronic Communications. Any Award Agreement, notice of exercise of an Award, or other document required or permitted by this Plan may be delivered in writing or, to the extent determined by the Administrator, electronically. Signatures may also be electronic if permitted by the Administrator.

17.5 Notices. Unless the Administrator specifies otherwise, any notice to the Company under any Option Agreement or with respect to any Awards or Award Shares shall be in writing (or, if so authorized by Section 17.4, communicated electronically), shall be addressed to the Secretary of the Company, and shall only be effective when received by the Secretary of the Company.

(Footnote continued)

A.P. PHARMA, INC.  
NON-QUALIFIED STOCK PLAN  
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## SECTION 1. PURPOSE; DEFINITIONS.

(a) Purpose. The purposes of the Plan are:

(i) to provide to certain persons who are not employees of the Company a material inducement to become executives of, or consultants to, A.P. Pharma, Inc., a Delaware corporation, its subsidiaries or affiliates by providing an opportunity to acquire stock in the Company; and

(ii) to encourage selected employees, excluding officers and directors, to improve operations and increase profits of the Company.

(b) Definitions. For purposes of the Plan, the following terms have the following meanings:

(i) "Award" means any award under the Plan, including any Option, Restricted Stock or Stock Purchase Right Award.

(ii) "Award Agreement" means, with respect to each Award, the signed written agreement between the Company and the Plan participant setting forth the terms and conditions of the Award.

(iii) "Board" means the Board of Directors of the Company.

(iv) "Change in Control" has the meaning set forth in Section 8(a).

(v) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

(vi) "Commission" means the Securities and Exchange Commission and any successor agency.

(vii) "Committee" means the Committee referred to in Section 2, or the Board in its capacity as administrator of the Plan in accordance with Section 2.

(viii) "Company" means A.P. Pharma, Inc., a Delaware corporation.

(ix) "Disability" means permanent and total disability as determined by the Committee for purposes of the Plan.

(x) "Non-Employee Director" has the meaning set forth in Rule 16b-3 under the Exchange Act, and any successor definition adopted by the Commission.

(xi) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

(xii) "Fair Market Value" means as of any given date (a) if the Stock is listed on any established stock exchange or a national market system, the closing sales price for the Stock or the closing bid if no sales were reported, as quoted on such system or exchange, as reported in the Wall Street Journal; or (b) in the absence of an established market for the Stock, the fair market value of the Stock as determined by the Committee in good faith.

(xiii) "Non-Qualified Stock Option" means an Option that is not an Incentive Stock Option, within the meaning of Section 422 of the Code.

(xiv) "Option" means an option granted under Section 5.

(xv) "Plan" means this A.P. Pharma, Inc. Non-Qualified Stock Plan, as amended from time to time.

(xvi) "Restricted Stock" means an Award of Stock subject to restrictions, as more fully described in Section 6.

(xvii) "Restriction Period" means the period determined by the Committee under Section 6(b).

(xviii) "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act, as amended from time to time, and any successor rule.

(xix) "Stock" means the Common Stock of the Company, and any successor security.

(xx) "Stock Purchase Right" means an Award granted under Section 7.

(xxi) "Subsidiary" has the meaning set forth in Section 424 of the Code.

(xxii) "Tax Date" means the date defined in Section 9(f).

(xxiii) "Termination" means, for purposes of the Plan, with respect to a participant, that the participant has ceased to be, for any reason, employed by, or a consultant to, the Company, a subsidiary or an affiliate; provided, that for purposes of this definition, unless otherwise determined by the President of the Company, in his sole discretion, Termination shall not include a change in status from an employee of, to a consultant to, the Company or any subsidiary or affiliate, or vice versa.

## SECTION 2. ADMINISTRATION.

(a) Committee. The Plan shall be administered by the Board or, upon delegation by the Board, by a committee of Non-Employee Directors appointed by the Board. In connection with the administration of the Plan, the Committee shall have the powers possessed by the Board. The Committee may act only by a majority of its members, except that the Committee may from time to time select another committee or one or more other persons to be responsible for any matters for which Non-Employee Director are not required pursuant to Rule 16b-3. The Board at any time may abolish the Committee and revest in the Board the administration of the Plan.

(b) Authority. The Committee shall grant Awards only to persons who (i) are not at the time of the Award employees of the Company for the purpose of providing a material inducement to such persons to become employees of or consultants to the Company or (ii) are employees, but not officers and directors of the Company. In particular and without limitation, the Committee, subject to the terms of the Plan, shall:

(i) select the persons to whom Awards may be granted; determine whether and to what extent Awards are to be granted under the Plan;

(ii) determine the number of shares to be covered by each Award granted under the Plan;

(iii) determine the terms and conditions of any Award granted under the Plan and any related loans to be made by the Company, based upon factors determined by the Committee; and

(iv) determine to what extent and under what circumstances any Award payments may be deferred by a participant.

(c) Committee Determinations Binding. The Committee may adopt, alter and repeal administrative rules, guidelines and practices governing the Plan as it from time to time shall deem advisable, may interpret the terms and provisions of the Plan, any Award and any Award Agreement and may otherwise supervise the administration of the Plan. Any determination made by the Committee pursuant to the provisions of the Plan with respect to any Award shall be made in its sole discretion at the time of the grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time. All decisions made by the Committee under the Plan shall be binding on all persons, including the Company and Plan participants.

## SECTION 3. STOCK SUBJECT TO PLAN.

(a) Number of Shares. The total number of shares of Stock reserved and available for issuance pursuant to Awards under this Plan shall be 250,000 shares. Such shares may consist, in whole or in part, of authorized and unissued shares or treasury shares or shares reacquired in private transactions or open market purchases, but all shares issued under the Plan, regardless of source shall be counted against the 250,000 share limitation. If any Option terminates or expires without being exercised in full or if any shares of Stock subject to an Award are forfeited, or if an Award otherwise terminates without issuance in full being made to the participant in the form of Stock, the shares not issued under such Option or Award shall again be available for issuance in connection with Awards. Any Award under this Plan shall be governed by the terms of the Plan and any applicable Award Agreement.

(b) Adjustments. In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split or other change in corporate structure affecting the Stock, such substitution or adjustments shall be made in the aggregate number of shares of Stock reserved for issuance under the Plan, in the number and exercise price of shares subject to outstanding Options, and in the number of shares subject to other outstanding Awards, as may be determined to be appropriate by the Committee, in its sole discretion; provided, however, that the number of shares subject to any Award shall always be a whole number.

#### SECTION 4. ELIGIBILITY.

Awards may be granted only to persons (i) not employed by the Company at the time of the Award and who the Company wishes to attract as an officer or other employee of, or consultant to, the Company, its subsidiaries and affiliates as a material inducement to accepting employment or consultancy with the Company or (ii) who are employees of the Company but are not officers or directors of the Company at the time of the Award.

#### SECTION 5. STOCK OPTIONS.

(a) Type. Any Option granted under the Plan shall be in such form as the Committee may from time to time approve; provided, that only Non-Qualified Stock Options may be granted under the Plan.

(b) Terms and Conditions. Options granted under the Plan shall be subject to the following terms and conditions:

(i) Option Term. The term of each Option shall be fixed by the Committee, but no Option shall be exercisable more than ten (10) years after the date the Option is granted.

(ii) Grant Date. The Company may grant Options under the Plan at any time and from time to time before the Plan terminates. The Committee shall specify the date of grant or, if it fails to, the date of grant shall be the date the intended optionee is first treated as an employee or consultant for payroll purposes.

(iii) Exercise Price. The exercise price per share of Stock purchasable under an Option shall be equal to at least 85% of the Fair Market Value on the date of grant.

(iv) Exercisability. Subject to the other provisions of the Plan, an Option shall be exercisable in its entirety at grant or at such times and in such amounts as are specified in the Award Agreement evidencing the Option. Except to the extent otherwise provided in the Award Agreement, in the event of Termination prior to the Option being exercisable in full, any such unexercisable portion shall expire as of such Termination. The Committee, in its absolute discretion, at any time may waive any limitations respecting the time at which an Option first becomes exercisable in whole or in part.

(v) Method of Exercise; Payment. To the extent the right to purchase shares has accrued, Options may be exercised, in whole or in part, from time to time, by written notice from the optionee to the Company stating the number of shares being purchased, accompanied by payment of the exercise price for the shares.

#### SECTION 6. RESTRICTED STOCK.

(a) Price. The Committee may grant to a participant Restricted Stock. The grantee shall pay the par value per share as consideration therefor.

(b) Restrictions. Subject to the provisions of the Plan and the Award Agreement, during the Restriction Period set by the Committee, commencing with and not exceeding ten (10) years from the date of such Award, the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock. Within these limits, the Committee may provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions, in whole or in part, based on service, performance or such other factors or criteria as the Committee may determine.

(c) Dividends. Unless otherwise determined by the Committee, with respect to dividends on shares of Restricted Stock, dividends payable in cash shall be automatically reinvested in additional Restricted Stock, and dividends payable in Stock shall be paid in the form of Restricted Stock.

(d) Termination. Except to the extent otherwise provided in the Award Agreement and pursuant to Section 6(b), in the event of a Termination during the Restriction Period, all shares still subject to restriction shall be forfeited by the participant.

#### SECTION 7. STOCK PURCHASE RIGHTS.

(a) Price. The Committee may grant Stock Purchase Rights which shall enable the recipients to purchase Stock at a price equal to not less than 85% of its Fair Market Value on the date of grant.

(b) Exercisability. Stock Purchase Rights shall be exercisable for a period determined by the Committee not exceeding 30 days from the date of the grant.

#### SECTION 8. CHANGE IN CONTROL.

(a) Definition of "Change in Control". For purposes of Section 8(b), a "Change in Control" means the occurrence of any one of the following:

(i) Any "person", as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, a subsidiary, an affiliate, or a Company employee benefit plan, including any trustee of such plan acting as trustee) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 51% or more of the combined voting power of the Company's then outstanding securities; or

(ii) The dissolution or liquidation (partial or total) of the Company or a sale of assets involving 51% or more of the assets of the Company, any merger or reorganization of the Company, whether or not another entity is the survivor, in a transaction pursuant to which the holders, as a group, of all of the shares of the Company outstanding prior to the transaction hold, as a group, less than 51% of the shares of the Company outstanding after the transaction, or any other event which the Board determines, in its discretion, would materially alter the structure of the Company or its ownership.

(b) Impact of Event. In the event of a "Change in Control" as defined in Section 8(a), acceleration provisions no more favorable to participants than the following shall apply:

(i) Any Options outstanding as of the date such Change in Control is determined to have occurred and not then exercisable and vested shall become fully exercisable and vested; and

(iii) The restrictions and limitations applicable to any Restricted Stock and Stock Purchase Rights shall lapse, and such Restricted Stock shall become fully vested.

#### SECTION 9. GENERAL PROVISIONS.

(a) Award Grants. Any Award may be granted either alone or in addition to other Awards granted under the Plan. Subject to the

terms and restrictions set forth elsewhere in the Plan, the Committee shall determine the consideration, if any, payable by the participant for any Award and, in addition to those set forth in the Plan, any other terms and conditions of the Awards. The Committee may condition the grant or payment of any Award upon the attainment of specified performance goals or such other factors or criteria, including vesting based on continued employment or consulting, as the Committee shall determine. Performance objectives may vary from participant to participant and among groups of participants and shall be based upon such Company, subsidiary, group or division factors or criteria as the Committee may deem appropriate, including, but not limited to, earnings per share or return on equity. The other provisions of Awards also need not be the same with respect to each recipient.

(b) Award Agreement. As soon as practicable after the date of an Award grant, the Company and the participant shall enter into a written Award Agreement identifying the date of grant, and specifying the terms and conditions of the Award. Options are not exercisable until after execution of the Award agreement by the Company and the Plan participant, but a delay in execution of the agreement shall not affect the validity of an Option grant.

(c) Certificates. All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders, legends and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Commission, any market in which the Stock is then traded and any applicable federal, state or foreign securities law.

(d) Termination. Unless otherwise provided in the applicable Award Agreement or by the Committee, in the event of Termination for any reason other than death, retirement or Disability, Awards held at the date of Termination (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part at any time within three (3) months after the date of Termination, or such lesser period specified in the Award Agreement (but in no event after the expiration date of the Award), but not thereafter. If Termination is due to retirement or to death or Disability, Awards held at the date of Termination (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part by the participant in the case of retirement or Disability, by the participant's guardian or legal representative or by the person to whom the Award is transferred by will or the laws of descent and distribution, at any time within two (2) years from the date of Termination or any lesser period specified in the Award Agreement (but in no event after the expiration of the Award).

(e) Delivery of Purchase Price. If and only to the extent authorized by the Committee, participants may make all or any portion of any payment due to the Company

(i) with respect to the consideration payable for an Award,

(ii) upon exercise of an Award, or

(iii) with respect to federal, state, local or foreign tax payable in connection with an Award, by delivery of (x) cash, (y) check, or (z) any property other than cash (including a promissory note of the participant or shares of Stock or securities) so long as, if applicable, such property constitutes valid consideration for the Stock under, and otherwise complies with, applicable law. No promissory note under the Plan shall have a term (including extensions) of more than five years or shall be of a principal amount exceeding 90% of the purchase price paid by the borrower.

(f) Tax Withholding. Any shares or other securities so withheld or tendered will be valued by the Committee as of the date they are withheld or tendered; provided, however, that Stock shall be valued at Fair Market Value on such date. The value of the shares withheld or tendered may not exceed the required federal, state, local and foreign withholding tax obligations as computed by the Company. Unless the Committee permits otherwise, the participant shall pay to the Company in

cash, promptly when the amount of such obligations becomes determinable (the "Tax Date"), all applicable federal, state, local and foreign withholding taxes that the Committee in its discretion determines to result (i) from the lapse of restrictions imposed upon an Award, (ii) upon exercise of an Award, or (iii) from a transfer or other disposition of shares acquired upon exercise or payment of an Award, or otherwise related to the Award or the shares acquired in connection with an Award.

A participant who has received an Award or payment under an Award may, to the extent, if any, authorized by the Committee in its discretion, make an election to (x) deliver to the Company a promissory note of the participant on the terms set forth in Section 9(e), or (y) tender any such securities to the Company to pay the amount of tax that the Committee in its discretion determines to be required to be withheld by the Company subject to any limitations imposed by Section 16(b) of the Exchange Act or other applicable law.

(g) No Transferability. Unless otherwise provided for in the applicable Award Agreement or by the Committee, no Award shall be assignable or otherwise transferable by the participant other than by will or by the laws of descent and distribution, and during the life of a participant, an Award shall be exercisable, and any elections with respect to an Award may be made, only by the participant or participant's guardian or legal representative.

(h) Adjustment of Awards; Waivers. The Committee may adjust the performance goals and measurements applicable to Awards (i) to take into account changes in law and accounting and tax rules, (ii) to make such adjustments as the Committee deems necessary or appropriate to reflect the inclusion or exclusion of the impact of extraordinary or unusual items, events or circumstances in order to avoid windfalls or hardships, and (iii) to make such adjustments as the Committee deems necessary or appropriate to reflect any material changes in business conditions. In the event of hardship or other special circumstances of a participant and otherwise in its discretion, the Committee may waive in whole or in part any or all restrictions, conditions, vesting, or forfeiture with respect to any Award granted to such participant.

(i) Non Competition. The Committee may condition its discretionary waiver of a forfeiture, the acceleration of vesting at the time of Termination of a participant holding any unexercised or unearned Award, the waiver of restrictions on any Award, or the extension of the expiration period to a period not longer than that provided by the Plan upon such participant's agreement (and compliance with such agreement) to (i) not engage in any business or activity competitive with any business or activity conducted by the Company and (ii) be available for consultations at the request of the Company's management, all on such terms and conditions (including conditions in addition to clauses (i) and (ii)) as the Committee may determine.

(j) Dividends. The reinvestment of dividends in additional Stock or Restricted Stock at the time of any dividend payment pursuant to Section 6(c) shall only be permissible if sufficient shares of Stock are available under Section 3 for such reinvestment (taking into account then outstanding Awards).

(k) Regulatory Compliance. Each Award under the Plan shall be subject to the condition that, if at any time the Committee shall determine that (i) the listing, registration or qualification of the shares of Stock upon any securities exchange or for trading in any securities market or under any state or federal law, (ii) the consent or approval of any government or regulatory body or (iii) an agreement by the participant with respect thereto, is necessary or desirable, then such Award shall not be consummated in whole or in part unless such listing, registration, qualification, consent, approval or agreement shall have been effected or obtained free of any conditions not acceptable to the Committee.

(l) Rights as Shareholder. Unless the Plan or the Committee expressly specifies otherwise, an optionee shall have no rights as a shareholder with respect to any shares covered by an Award until the stock certificates representing the shares are actually delivered to the optionee. Subject to Sections 3(b)

and 6(c), no adjustment shall be made for dividends or other rights for which the record date is prior to the date the certificates are delivered.

(m) Beneficiary Designation. The Committee, in its discretion, may establish procedures for a participant to designate a beneficiary to whom any amounts payable in the event of the participant's death are to be paid.

(n) Additional Plans. Nothing contained in the Plan shall prevent the Company, a subsidiary or an affiliate from adopting other or additional compensation arrangements for its employees and consultants.

(o) No Employment Rights. The adoption of the Plan shall not confer upon any employee any right to continued employment nor shall it interfere in any way with the right of the Company, a subsidiary or an affiliate to terminate the employment of any employee at any time.

(p) Rule 16b-3. Notwithstanding any provision of the Plan, the Plan shall always be administered, and Awards shall always be granted and exercised, in such a manner as to conform to the provisions of Rule 16b-3.

(q) Governing Law. The Plan and all Awards shall be governed by and construed in accordance with the laws of the State of California.

(r) Use of Proceeds. All cash proceeds to the Company under the Plan shall constitute general funds of the Company.

(s) Unfunded Status of Plan. The Plan shall constitute an "unfunded" plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or arrangements to meet the obligations created under the Plan to deliver Stock or make payments; provided, however, that unless the Committee otherwise determines, the existence of such trusts or other arrangements shall be consistent with the "unfunded" status of the Plan.

(t) Assumption by Successor. The obligations of the Company under the Plan and under any outstanding Award may be assumed by any successor corporation, which for purposes of the Plan shall be included within the meaning of "Company".

#### SECTION 10. AMENDMENTS AND TERMINATION.

The Board may amend, alter or discontinue the Plan or any Award, but no amendment, alteration or discontinuance shall be made which would impair the rights of a participant under an outstanding Award without the participant's consent.

#### SECTION 11. EFFECTIVE DATE OF PLAN.

The Plan shall be effective on the date it is adopted by the Board.

#### SECTION 12. TERM OF PLAN.

No Award shall be granted on or after October 24, 2010, but Awards granted prior to October 24, 2010 may extend beyond that date.

(Footnote continued)