

# EPIQ SYSTEMS INC

## FORM 8-K

(Current report filing)

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **June 2, 2010**

**EPIQ SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

**Missouri**

(State or other jurisdiction  
of incorporation)

**0-22081**

(Commission File Number)

**48-1056429**

(IRS Employer  
Identification Number)

**501 Kansas Avenue, Kansas City, Kansas 66105**

(Address of principal executive offices) (Zip Code)

**(913) 621-9500**

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Amended and Restated 2004 Equity Incentive Plan

On June 2, 2010, our board of directors amended the 2004 Equity Incentive Plan, as amended (“2004 Plan”). Certain directors, officers, employees and certain other consultants who perform services for the company are eligible to receive grants under the 2004 Plan. The amendment of the 2004 Plan provides a definition of “grant date”, which is the date on which the board of directors or the company’s compensation committee determines and approves the grant of an award under the 2004 Plan, including the determination of the option recipients, option exercise price, number of awards or shares of stock subject to an award granted to each recipient, and the type of the award (e.g., stock option or restricted stock). The amendment also incorporates certain limitations on any modification of outstanding options, including the prohibition of any modification of an option that would be deemed to be a repricing under the rules of the New York Stock Exchange or the NASDAQ Global Select Market unless it is approved by the company’s shareholders.

Amended and Restated 1995 Stock Option Plan

On June 2, 2010, our board of directors amended the 1995 Stock Option Plan, as amended (“1995 Plan”) to incorporate certain limitations on any modification of outstanding options, including the prohibition of any modification of an option that would be deemed to be a repricing under the rules of the New York Stock Exchange or the NASDAQ Global Select Market unless it is approved by the company’s shareholders. All shares under the 1995 Plan either have already been issued or are reserved for issuance with respect to outstanding awards, and no further grants of options can be made pursuant to the 1995 Plan.

These amendments to the 2004 Plan and the 1995 Plan became effective immediately upon adoption by the board on June 2, 2010, and the descriptions of the amendments are qualified in their entirety by reference to the full text of the 1995 Plan and the 2004 Plan, which are filed as Exhibits 10.1 and 10.2, respectively, to this Form 8-K.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On June 2, 2010, our board of directors amended the company’s bylaws to modify the procedures for the nomination of directors by shareholders. As amended, a shareholder owning at least 5% of our outstanding common stock for at least 24 months may nominate a director by notifying the company’s secretary of the nomination and providing certain related information concerning the shareholder and the proposed nominee. This notice and related information must be provided at least 180 days and 166 days, respectively, prior to the first anniversary of the date the proxy statement was released to the shareholders in connection with the preceding year’s annual meeting. Prior to this amendment, any shareholder could nominate a director by notifying the company’s secretary of the nomination and providing certain related information concerning the shareholder and the proposed nominee at least 30 days prior to the first anniversary of the preceding year’s annual meeting. As a result of the amendment, an eligible shareholder who seeks to make a nomination for the 2011 annual meeting must provide to the company’s secretary written notice of the nomination and certain related information by October 29, 2010, and additional information concerning the proposed nominee must be provided by November 12, 2010.

The bylaws also were amended to require that the board consist of at least a two-thirds majority of independent directors. Independence is defined in the company’s corporate governance guidelines, and

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generally is a person other than an “executive officer” (as defined in applicable rules of the NASDAQ Global Select Market), an employee of the company or any other individual having a relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Prior to the amendment, the bylaws did not require the board comprise a specified number or percentage of independent directors (although at least a majority of the board has been independent, in accordance with rules of the NASDAQ Global Select Market).

These amendments became effective immediately upon adoption by the board on June 2, 2010, and the description of the amendments is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, which is filed as Exhibit 3.2 to this Form 8-K.

**Item 5.05. Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.**

On June 2, 2010, our board of directors approved modifications to the Code of Business Conduct and Ethics (the “Code”) applicable to its directors, officers, employees and other company personnel to clarify and integrate its whistleblower policy, expand the anti-bribery policy description, provide guidance concerning the acceptance of gifts, and make certain conforming and other changes.

The amendment of the Code did not relate to or result in any waiver, explicit or implicit, of any provision of the Company’s previous Code.

The foregoing is only a summary of the amendments to the Code and is qualified in its entirety by reference to the full text of the Code. As previously disclosed in our most recently filed annual report and proxy statement, the full text of the Code can be found on the “Investor Relations — Corporate Governance” portion of the Company’s website at [www.epiqsystems.com/investors.php](http://www.epiqsystems.com/investors.php).

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

3.2 — Bylaws, as amended and restated on June 2, 2010.

10.1 — 1995 Stock Option Plan, as amended and restated on June 2, 2010.

10.2 — 2004 Equity Incentive Plan, as amended and restated on June 2, 2010.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

### EPIQ SYSTEMS, INC.

Date: June 4, 2010

By: /s/ Tom W. Olofson  
Name: Tom W. Olofson  
Title: Chairman of the Board, Chief Executive Officer and Director

**AMENDED AND RESTATED BYLAWS(1)****OF****EPIQ SYSTEMS, INC.**

A Missouri Corporation

**ARTICLE I****OFFICES**

The principal office of Epiq Systems, Inc., a Missouri corporation, (the "Corporation"), shall be located in the City of Kansas City, State of Kansas. The Corporation may also have offices at such other places, either within or without the State of Missouri, as the Board of Directors may from time to time determine or as the business of the Corporation may require. The Registered Office of the Corporation, required by The General and Business Corporation Law of Missouri to be maintained in the State of Missouri, shall be as designated in the Articles of Incorporation, and the location of the Registered Office may be changed from time to time by action of the Board of Directors to any other place in Missouri.

**ARTICLE II****SHAREHOLDERS**

**Section 1. Annual Meeting.** An annual meeting of shareholders shall be held during the month of June in each year on the day and at the hour to be designated by the Board of Directors or the Chairman of the Board or the President, at the principal offices of the corporation, or at such other place, either within or without the State of Missouri, as may be designated in the notice of such meeting, for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. If the election of directors shall not be held on the day designated for the annual meeting, the board of directors shall cause the election to be held as soon thereafter as may be convenient.

**Section 2. Special Meetings.** Special meetings of the shareholders may be held at any time for the consideration of such matters as shall be specified in the Corporation's notice of such meetings. Such special meetings shall be held at the time and place, either within or without the State of Missouri, specified in the notice of such meeting, and shall consider only such business as shall be specified in the notice of such meetings. Except as otherwise required by law and subject to the rights, if any, of the holders of any class or series of stock having a preference over the

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(1) As amended and restated on June 2, 2010.

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Common Stock as to dividends or liquidation, special meetings of the shareholders may be called only by the Chairman of the Board, the President or the Board of Directors.

### **Section 3. Nomination of Directors and Presentation of Business at Shareholder Meetings.**

(a) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors, or (iii) by any shareholder who was a shareholder of record at the time of the giving of notice provided for in this Section 3, who is entitled to vote thereon at the meeting and who complied with the notice procedures set forth in this Section 3; provided that, except as otherwise required by applicable law, nominations of persons for election to the Board of Directors shall only be given by shareholders who own at least five percent (5%) of the Corporation's outstanding common stock and who have held such shares for at least twenty-four months.

(b) For nominations or other business to be properly brought before an annual meeting by shareholders pursuant to clause (iii) of Section 3(a) above and the proviso following such clause, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than one-hundred and eighty (180) calendar days prior to the first anniversary of the date the proxy statement was released to the shareholders in connection with the preceding year's annual meeting; provided, however, that in the event that no proxy statement was released in connection with an annual meeting for the preceding year, no annual meeting was held in the preceding year or the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary date, notice by the shareholder to be timely must be so delivered not later than the close of business on the later of (i) the 60th day prior to such annual meeting, or (ii) the 10th day following the date on which public announcement of the date of such meeting is first made. Such shareholder's notice shall set forth as to each person whom the shareholder proposes to nominate for election or reelection as a director: (1) the name and address of the shareholder (and of the beneficial (as such term is defined in 17 C.F.R. § 240.13d-3 ("Rule 13d-3") under the Securities Exchange Act of 1934 ("Exchange Act") owner, if any, on whose behalf the nomination is made) who intends to make the nomination and of the person or persons to be nominated; (2) evidence of eligibility, including (i) the class and number of shares beneficially (as such term is defined in Rule 13d-3 of the Exchange Act) owned by the nominating shareholder and each nominee proposed by such shareholder, and (ii) a representation that such shareholder is entitled to vote in the election of directors at the annual meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (3) a recommendation identifying the nominee and his/her contact information; (4) a statement of the nominee's qualifications; (5) a description of all arrangements or understandings between the shareholder and nominee(s) and any other person (naming such persons) pursuant to which the nomination is made; (6) other information required to be included in a proxy statement filed pursuant to 17 C.F.R. § 240.14a-1 et seq. ("Regulation 14A") under the Exchange Act; (7) written consent signed by the nominee evidencing a willingness to serve as a director if elected; and (8) a commitment by the nominee to meet personally with the nominating and corporate governance committee. As to any other business that the shareholder proposes to bring before the

meeting, a shareholder's notice to the Secretary shall set forth as to each matter: (i) a brief description of the business desired to be brought before the annual meeting; (ii) a representation that such shareholder is a holder of record of stock entitled to vote on the business proposed by such shareholder and intends to appear in person or by proxy at the meeting to present the proposed business to be brought before the meeting; (iii) the name and address of the shareholder proposing such business, as it appears on the Corporation's books, and of the beneficial owner (as such term is defined in Rule 13d-3 under the Exchange Act), if any, on whose behalf the business is proposed; (iv) the class and number of shares of the Corporation which are owned beneficially (as such term is defined in Rule 13d-3 under the Exchange Act) and of record by the shareholder; (v) the reason for conducting such business at the meeting and any material interest of the shareholder or such beneficial owner in such business; and (vi) all other information with respect to each such matter as would have been required to be included in a proxy statement filed pursuant to Regulation 14A as then in effect under the Exchange Act had proxies been solicited by the Board with respect thereto. Notwithstanding anything in this paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least forty (40) days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(c) Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders with regard to which the Board has determined that directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board, or (iii) by any shareholder who is a shareholder of record at the time of the giving of notice provided for in this Section 3, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in the last sentence of this paragraph (c). In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board, any such shareholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the shareholder's notice setting forth the information required by paragraph (b) of this Section 3 shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of (i) the 30th day prior to such special meeting, or (ii) the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(d) Only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 3. The chairman of the meeting of shareholders shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 3 and, if any proposed nomination or business is not in compliance with this Section 3, to declare that such defective nominations or proposal shall be disregarded.

(e) For purposes of this Section 3, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(f) Notwithstanding the foregoing provisions of this Section 3, (i) if any class or series of stock has the right, voting separately by class or series, to elect directors at an annual or special meeting of shareholders, such directors shall be nominated and elected pursuant to the terms of such class or series of stock; and (ii) a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 3. To the extent this Section 3 shall be deemed by the Board of Directors or the Securities and Exchange Commission, or adjudged by a court of competent jurisdiction, to be inconsistent with the rights of shareholders to request inclusion of a proposal in the Corporation’s proxy statement pursuant to 17 C.F.R. § 240.14a-8 (“Rule 14a-8”) under the Exchange Act, such rule shall prevail.

**Section 4. Notice of Meetings.** Written or printed notice stating the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) or more than seventy (70) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman of the Board, the President, the Board of Directors or the Secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the records of the Corporation, with postage thereon prepaid. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting, except when a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

**Section 5. Conduct of Meeting .** The Board of Directors of the Corporation may, to the extent not prohibited by law, adopt by resolution such rules and regulations for the conduct of the meetings or any meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, (i) the establishment of an agenda for the meeting, (ii) the establishment of procedures for the maintenance of order, (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Corporation, their duly authorized proxies and such other persons as shall be determined, (iv) restrictions on entry to the meeting after a specified time, (v) limitations on the time allotted to the questions or comments on the affairs of the Corporation, and (vi) the timing of the opening and closing of the voting polls. Unless otherwise determined by the Board or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with any rules of parliamentary procedure. If demanded by ten percent (10%) of the shareholders entitled to vote, present in person or by proxy, the vote on any question or election shall be by ballot and conducted by two inspectors appointed by the chairman of the meeting and who are not directors, in which event, all questions touching the qualification of voters and the validity of

proxies, shall be decided by such inspectors; otherwise, no vote need be by ballot or conducted by inspectors.

**Section 6. Closing of Transfer Books or Fixing of Record Date.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend or other distribution, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors of the Corporation may provide that the share transfer books shall be closed for a stated period but not to exceed, in any case, seventy (70) days. If the share transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than seventy (70) days preceding such meeting or action, and, for a meeting of shareholders, not less than ten (10) days immediately preceding such meeting. If the share transfer books are not closed and no record date is fixed for the determination of shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date of such determination of shareholders.

**Section 7. List of Shareholders.** The office or agent having charge of the transfer books for shares shall make, at least ten (10) days and not more than seventy (70) days before such meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of each and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting, and shall be subject to inspection by any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

**Section 8. Quorum and Manner of Acting.** A majority of the outstanding shares of the Corporation entitled to vote at the meeting, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders; provided that, if less than a majority of the outstanding shares entitled to vote at the meeting are represented at said meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice to any shareholder not present at the meeting, to a specified date not later than ninety (90) days after such adjournment. At any subsequent session of an adjourned meeting at which a quorum is present in person or by proxy, any business may be transacted which could have been transacted at the initial session of the meeting if a quorum had been present. If a quorum is present, the affirmative vote of a majority of the shares represented at any meeting shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by law, the Articles of Incorporation or these Bylaws. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

**Section 9. Proxies.** At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of execution, unless otherwise provided in the proxy.

**Section 10. Voting of Shares; No Cumulative Voting.** Each shareholder shall have the number of votes provided in the Articles of Incorporation for each share of stock entitled to vote under the provisions of the Articles of Incorporation and registered in such shareholder's name on the books of the Corporation. Except as otherwise provided by the Articles of Incorporation, no cumulative voting shall be permitted in the election of directors. At all meetings of shareholders, except as otherwise required by statute, by the Articles of Incorporation or by these Bylaws, all matters shall be decided by the vote of a majority in interest of the shareholders entitled to vote and present in person or by proxy.

**Section 11. Voting of Shares of Certain Holders.** The term "shareholder" as used in these Bylaws means a registered holder of share of the Corporation; provided, however, that if permitted by law:

- (a) Shares of stock in the name of another corporation, foreign or domestic, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine.
- (b) Shares of stock in the name of a deceased person may be voted by his or her executor or administrator in person or by proxy.
- (c) Shares of stock in the name of a guardian, curator or trustee may be voted by such fiduciary either in person or by proxy provided the books of the Corporation show the stock to be in the name of such fiduciary in such capacity.
- (d) Shares of stock in the name of a receiver may be voted by such receiver, and shares held by or in the control of a receiver may be voted by such receiver without the transfer thereof into his or her name, if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.
- (e) Shares of stock which have been pledged shall be voted by the pledgor until the shares of stock have been transferred into the name of the pledgee, and, thereafter, the pledgee shall be entitled to vote the shares so transferred.

**Section 12. Informal Action by Shareholders.** Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

## ARTICLE III

### DIRECTORS

**Section 1. General Powers.** The business and affairs of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Articles of Incorporation or these Bylaws directed or required to be exercised and done by shareholders.

**Section 2. Number, Tenure and Qualifications.** The number of directors to constitute the Board of Directors shall be six (6), provided that (i) such number may be increased or decreased by future action of the Board of Directors, (ii) the number of directors shall not be less than three (3); and (iii) the Board of Directors shall be composed of a two-thirds majority of Independent Directors, as such term is defined in the Corporation's Corporate Governance Guidelines. Each director shall hold office for the term specified in the Articles of Incorporation and until his or her successor, if any, shall have been elected and qualified, or until his or her earlier resignation, removal or death. Except for those directors appointed to the Board of Directors by reason of Article III, Section 3, only such persons who are nominated in accordance with the procedures set forth in Article II, Section 3 shall be eligible to serve as directors.

**Section 3. Vacancies and Newly Created Directorships.** Unless otherwise provided by law, the Articles of Incorporation or these Bylaws, any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the number of directors, may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director, and any directors so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until their respective successors are elected and qualified or until their earlier resignation, removal or death. If any unexpected vacancy occurs to reduce the number of Independent Directors below the two-thirds majority threshold as set forth in Article III, Section 2 above, except as may otherwise be required by applicable law, that vacancy shall be filled with an Independent Director within twelve (12) months of such vacancy.

#### **Section 4. Meetings.**

(a) The annual meeting of the Board of Directors shall be held at the same place as the annual meeting of the shareholders immediately following said meeting. In the event of adjournment of such annual meeting of the Board of Directors, because a quorum is not present or otherwise, such meeting may be held, without further notice, at any place within or without the State of Missouri, as may be designated by the directors adjourning such meeting, provided a quorum is present, but in no event later than thirty (30) days after the annual meeting of shareholders. All other meetings of the Board of Directors shall be held at the principal place of business of the Corporation or at such other place within or without the State of Missouri as may be designated by the Board of Directors.

(b) Regular meetings of the Board of Directors may be held without notice at such times and places either within or without the State of Missouri as shall from time to time be fixed

by resolution adopted by the Board of Directors. Any business may be transacted at the annual meeting or any regular meeting of the Board.

(c) Except as may otherwise be required by law, special meetings of the Board of Directors may be called at any time by the Chairman of the Board, the President or a majority of the members of the Board of Directors. Such meeting may be held either within or without the State of Missouri.

**Section 5. Notice of Meetings.** No notice, other than that provided by these Bylaws, shall be necessary for the annual meeting of the Board of Directors, and no notice, other than as specified in Section 4(b), shall be necessary for any regular meeting of the Board. Written notice of each special meeting shall be given to each director, delivered personally or by mail or by telephone, at least three (3) days prior thereto. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the place of business of the director, with postage thereon prepaid. If notice be given by telegram, such notices shall be deemed to be delivered when the telegram is delivered to the telegraph company, addressed to the place of business of the director. Whenever any notice is required to be given to any director, a waiver thereof in writing signed by the director, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall be deemed a waiver of notice thereof, except where such attendance is for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**Section 6. Meeting by Telephone Conference or Similar Communications Equipment.** Unless otherwise restricted by the Articles of Incorporation or these Bylaws or by law, members of the Board of Directors of the Corporation, or any committee designated by such board, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in such manner shall constitute presence in person at such meeting.

**Section 7. Quorum.** A majority of the number of directors elected and holding office at the time of any meeting shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that if less than a majority of such number of directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws.

**Section 8. Action by Unanimous Consent.** Any action which is required to be or may be taken at a meeting of the Board of Directors or any committee of the Board may be taken without a meeting if all the members of the Board of Directors or committee, as the case may be, consent in writing to such action. Such consents shall have the same force and effect as a unanimous vote of the directors or committee members at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Board or the committee, as the case may be.

## **Section 9. Committees.**

(a) The Board of Directors may, by resolution or resolutions adopted by a majority of the whole Board, designate two (2) or more directors of the Corporation to constitute one or more committees (including, without limitation, an Executive Committee). Each such committee, to the extent provided in such resolution or resolutions, shall have and may exercise all of the authority of the Board in the management of the Corporation; provided, however, that the designation of each such committee and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed upon it or such member by law.

(b) Each such committee shall keep regular minutes of its proceedings, which minutes shall be recorded in the minute book of the Corporation. The Secretary or an Assistant Secretary of the Corporation may act as Secretary for each such committee if the committee so requests.

**Section 10. Executive Committee.** The Board of Directors at the annual or any regular or special meeting of the directors may, by resolution adopted by a majority of the whole Board, designate and elect any two (2) or more directors of the Corporation to constitute an Executive Committee of the Corporation and appoint one of the directors so designated as the chairman of the Executive Committee. The Executive Committee, to the extent provided in said resolution or resolutions, shall have and may exercise all of the authority of the Board of Directors in the management of the corporation. Vacancies in the committee may be filled by the Board at any meeting thereof. Each member of the committee shall hold office until such committee member's successor has been duly elected and qualified, or until such committee member's resignation or removal from the Executive Committee by the Board, or until such committee member otherwise ceases to be a director. Any member of the Executive Committee may be removed from the committee by resolution adopted by a majority of the Board. The compensation, if any, of members of the Executive Committee shall be established by resolution of the Board.

(c) All actions taken by the Executive Committee shall be reported to the Board at the next meeting of the Board after such action is taken. The minute books of the Executive Committee shall at all times be open to the inspection of any director.

(d) The Executive Committee shall meet at the call of its chairman or of any two members of the Executive Committee. A majority of the Executive Committee shall constitute a quorum for the transaction of business (or if there shall only be two members, then both must be present), and the act of a majority of those present at any meeting at which a quorum is present (or if there shall be only two members, then they must act unanimously) shall constitute the act of the Executive Committee.

## **Section 11. Audit Committee.**

(a) The Board of Directors at the annual or any regular or special meeting of the directors may, by resolution adopted by a majority of the whole Board, designate and elect any two (2) or more directors of the Corporation to constitute an Audit Committee and appoint one of the directors so designated as the chairman of the Audit Committee. Vacancies in the committee may be filled by the Board at any meeting thereof. Each member of the committee shall hold office until such committee member's successor has been duly elected and qualified, or until such committee

member's resignation or removal from the Audit Committee by the Board, or until such committee member otherwise ceases to be a director. Any member of the Audit Committee may be removed from the committee by resolution adopted by a majority of the Board. The compensation, if any, of members of the Audit Committee shall be established by resolution of the Board.

(b) The Audit Committee shall be responsible for (i) recommending to the Board the appointment or discharge of independent auditors, (ii) reviewing with the management of the Corporation and the independent auditors the terms of engagement of independent auditors, including the fees, scope and timing of the audit and any other services rendered by the independent auditors, (iii) reviewing, with the independent auditors and management, the Corporation's policies and procedures with respect to internal auditing, accounting and financial controls, (iv) reviewing with management the independent statements, audit results and reports and the recommendations made by any of the auditors with respect to changes in accounting procedures and internal controls, (v) reviewing the results of studies of the Corporation's system of internal accounting controls, (vi) and performing any other duties or functions deemed appropriate by the Board. The Audit Committee shall have the powers and rights necessary or desirable to fulfill these responsibilities, including the power and right to consult with legal counsel and to rely upon the opinion of legal counsel. The Audit Committee is authorized to communicate directly with the Corporation's financial officers and employees, internal auditors and independent auditors as it deems desirable and to have the internal auditors or independent auditors perform any additional procedures as it deems appropriate.

(c) All actions taken by the Audit Committee shall be reported to the Board at the next meeting of the Board after such action is taken. The minute books of the Audit Committee shall at all times be open to the inspection of any director.

(d) The Audit Committee shall meet at the call of its chairman or of any two members of the Audit Committee. A majority of the Audit Committee shall constitute a quorum for the transaction of business (or if there shall only be two members, then both must be present), and the act of a majority of those present at any meeting at which a quorum is present (or if there shall be only two members, then they must act unanimously) shall constitute the act of the Audit Committee.

**Section 12. Committee Procedures.** Unless otherwise provided in these Bylaws or in the resolution designating any committee, any committee may fix its rules or procedures, fix the time and place of its meetings and specify what notice of meetings, if any, shall be given.

**Section 13. Limitation of Committee Powers.** Notwithstanding any other provision of these Bylaws, no committee of the Board of Directors shall have the power or authority of the Board with respect to (i) amending the Articles of Incorporation, (ii) approving or recommending to shareholders any type or form of Business Combination (as defined in Section 351.459 of The General and Business Corporation Law of Missouri), (iii) approving or recommending to the shareholders a dissolution of the Corporation or a revocation of a dissolution, (iv) amending these Bylaws, (v) declaring a dividend or making any other distribution to the shareholders, (vi) authorizing the issuance of stock otherwise than pursuant to the grant of an award or exercise of a stock option under employee incentive plans of the Corporation or in connection with a public

offering of securities registered under the Securities Act of 1933, or (vii) appointing any member of any committee of the Board.

**Section 14. Compensation of Directors.** The Board of Directors, by resolution adopted by a majority of the whole Board, may establish reasonable compensation of all directors for services to the Corporation as directors, officers, or otherwise, provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of any standing committee may be allowed like compensation for their services to the Corporation.

**Section 15. Resignations.** Any director may resign at any time upon written notice to the Corporation. Such resignation shall take effect at the time specified therein or, if no time is specified therein, upon receipt thereof by the Corporation, and, unless otherwise specified therein, the acceptance of such resignation by the Corporation shall not be necessary to make such resignation effective.

**Section 16. Removal of Directors.** Any director or directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote.

## ARTICLE IV

### OFFICERS

#### Section 1. Designations.

(a) The officers of the Corporation shall be a Chairman of the Board of Directors, a Chief Executive Officer, a President, a Chief Operating Officer, one or more Executive Vice Presidents, one or more Vice Presidents, a Secretary, a Treasurer, one or more Assistant Secretaries and one or more Assistant Treasurers. The Board may, from time to time, elect one or more of the prescribed officers as it shall deem advisable, but need not elect any officers other than a Chairman of the Board, a President, a Treasurer and a Secretary. The Board may, if it desires, elect or appoint additional officers and may further identify or describe any one or more of the officers of the Corporation.

(b) The Chairman of the Board of Directors shall be chosen from among the Board, but the other officers of the Corporation need not be members of the Board. Any two or more offices may be held by the same person.

**Section 2. Election and Term of Office.** The officers of the Corporation shall be elected by the Board of Directors at the annual meeting of the Board of Directors held after each annual meeting of shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Vacancies may be filled or new offices filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified, or until his or her death, or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election or

appointment of an officer or agent shall not of itself create contract rights.

**Section 3. Agents.** The Board of Directors from time to time may appoint such other agents for the Corporation as the Board shall deem necessary or advisable, each of whom shall serve at the pleasure of the Board or for such period as the Board may specify, and shall exercise such powers, have such titles and perform such duties as shall be determined from time to time by the Board or by an officer empowered by the Board to make such determinations.

**Section 4. Removal.** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed.

**Section 5. Salaries and Compensation.** Salaries and compensation of all elected officers of the Corporation shall be fixed, increased or decreased by the Board of Directors, but this power, except as to the salary or compensation of the Chairman of the Board and the President, may, unless prohibited by law, be delegated by the Board to the Chairman of the Board, the President, or a committee. Salaries and compensation of all appointed officers, agents and employees of the Corporation may be fixed, increased or decreased by the Board, but until action is taken with respect thereto by the Board, the same may be fixed, increased or decreased by the President or by such other officer or officers as may be empowered by the Board to do so.

**Section 6. Chairman of the Board.** Unless the Board of Directors otherwise provides, the Chairman of the Board shall also be the Chief Executive Officer of the Corporation. The Chairman of the Board shall preside at all meetings of the shareholders and of the Board of Directors. The Chairman shall have the authority to sign all bonds, notes, debentures, mortgages and other contracts of the Corporation, may cause the seal to be affixed thereto, and may execute all other instruments, for and in the name of the Corporation.

**Section 7. President.**

(a) Subject to the control of the Board of Directors, the President shall have general supervision, control, and management of the affairs and business of the Corporation, and shall have general charge and supervision of all officers, agents, and employees of the Corporation. In the event of the absence or disability of the Chairman of the Board, the President shall perform the duties and exercise the powers of the Chairman of the Board. In the absence of specific action by the Board of Directors, the President shall have final approval of contracts executed by the Corporation.

(b) The President may execute certificates of stock of the Corporation and all bonds, notes, debentures, mortgages and other contracts of the Corporation, may cause the seal to be affixed thereto, and may execute all other instruments, for and in the name of the Corporation.

(c) Unless the Board of Directors otherwise provides, the President, or any person designated in writing by the President, shall have full power and authority on behalf of the Corporation to (i) attend and to vote or take action at any meeting of the holders of securities of

corporations in which the Corporation may hold securities, and at such meetings shall possess and may exercise any and all rights and powers incident to being a holder of such securities, and (ii) execute and deliver waivers of notice and proxies for an in the name of this Corporation with respect to securities of any such corporation held by this Corporation.

(d) The President shall, unless the Board of Directors otherwise provides, be an ex officio member of all standing committees.

(e) The President shall perform such other duties and have such other powers, responsibilities and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

**Section 8. Chief Operating Officer, Executive Vice Presidents and Vice Presidents.** In the absence of the President, or in the event of his or her inability or refusal to act, the Chief Operating Officer, the Executive Vice President(s) and the Vice President(s) in the order designated or, in the absence of any designation, the Chief Operating Officer shall perform the duties of the President, and, when so acting, shall have all powers of and be subject to all the restrictions upon the President. The Chief Operating Officer may sign, with the Secretary or an Assistant Secretary, certificates of stock of the Corporation; and shall perform other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

**Section 9. Treasurer and Assistant Treasurers.** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever; deposit all such moneys in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these Bylaws; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors. In the absence or disability of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer may perform the duties and exercise the powers of the Treasurer until the Board of Directors otherwise provides. Assistant Treasurers shall perform such other duties and have such other powers, responsibilities and authority as the Board may from time to time prescribe.

**Section 10. Secretary and Assistant Secretaries.** The Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors. The Secretary shall keep the minutes of the meetings of shareholders and the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all certificates of stock prior to the issuance thereof, and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; keep a register of the post office address of each shareholder, which shall be furnished to the Secretary by such shareholders; sign with the President or the Chief Operating Officer certificates for shares of the corporation, the issue of which shall have been authorized by resolution of the Board of Directors; and have general charge of the share transfer books of the Corporation. In the absence or disability of the Secretary

or in the event of the Secretary's inability or refusal to act, any Assistant Secretary may perform the duties and exercise the powers of the Secretary until the Board of Directors otherwise provides. Assistant Secretaries shall perform such other duties and have such other powers, responsibilities and authority as the Board may from time to time prescribe.

## ARTICLE V

### INDEMNIFICATION

**Section 1. Indemnification in Actions by Third Parties.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the Corporation, or is or was serving in an Indemnifiable Capacity against all liabilities and expenses, including, without limitation, attorneys' fees, judgments, fines, amounts paid in settlement (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Corporation in accordance with Section 4), ERISA excise taxes or penalties, or other expenses actually and reasonably incurred in connection with such action, suit, or proceeding (including, without limitation, the investigation, defense, settlement, or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful; provided that the Corporation shall not be required to indemnify or advance expenses to any such person seeking indemnification or advancement of expenses in connection with any action, suit or proceeding initiated by such person (including, without limitation, any cross-claim or counterclaim) unless the initiation of such action, suit or proceeding was authorized by the Board of Directors or as otherwise provided in Section 4. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

**Section 2. Indemnification in Derivative Actions.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving in an Indemnifiable Capacity against amounts paid in settlement thereof (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Corporation in accordance with Section 4) and all expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense or settlement of the action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if the person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification under this Section 2 shall be made in respect of any claim, issue or matter as to

which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duties to the Corporation unless and only to the extent that the court in which the action or suit was brought determines upon application, that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

**Section 3. Determination of Right to Indemnification.** Any indemnification under Section 1 and 2 of this Article, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in this article. The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders. If such determination is adverse to the person to be indemnified hereunder, such person shall have the right to maintain an action in any court of competent jurisdiction against the Corporation to determine whether or not such person has met the requisite standard of conduct and is entitled to such indemnification hereunder. For the purposes of such court action, an adverse determination as to the eligibility of a person for indemnification made pursuant to this Section 3 shall not constitute a defense to such action nor create a presumption regarding such person's eligibility for indemnification hereunder. If such court action is successful and the person is determined to be entitled to such indemnification, such person shall be reimbursed by the Corporation for all fees and expenses, including attorneys' fees, actually and reasonably incurred in connection with any such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

**Section 4. Advancement of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amounts unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized in this Article. In no event shall any advance be made in instances where it is reasonably determined that such person would not be entitled to indemnification hereunder or that such person deliberately breached such person's duty to the Corporation or its shareholder (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding, (ii) if such quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the shareholders, and such determination shall be final and binding.

**Section 5. Non-Exclusivity.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification shall be entitled under any other bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 6. Insurance.** Upon resolution passed by the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was serving in an Indemnifiable Capacity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article V. Notwithstanding anything in this Article V to the contrary: (i) the Corporation shall not be obligated to indemnify any person serving in an Indemnifiable Capacity for any amounts which have been paid directly to such person by any insurance maintained by the Corporation; and (ii) an indemnification provided pursuant to this Article V (A) shall not be used as a source of contribution to, or as a substitute for, or as a basis for recoupment of any payments pursuant to, any indemnification obligation or insurance coverage which is available from any Other Enterprise, and (B) shall become operative, and payments shall be required to be made thereunder, only in the event and to the extent that the amounts in question have not been fully paid by any indemnification obligation or insurance coverage which is available from any Other Enterprise.

**Section 7. Vesting of Rights.** The rights granted or created hereby shall be vested in each person entitled to indemnification hereunder as a bargained-for, contractual condition of such person's serving or having served in an Indemnifiable Capacity and, while this Article V may be amended or repealed, no such amendment or repeal shall release, terminate or adversely affect the rights of such person under this Article V with respect to any act taken or the failure to take any act by such person prior to such amendment or repeal or with respect to any action, suit or proceeding with respect to such act or failure to act filed after such amendment or repeal.

**Section 8. Definitions.** For purposes of this Article V, references to:

(a) "the Corporation" shall, if and only if the Board of Directors so determines, include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify a person who serves in an Indemnifiable Capacity so that any person who is or was serving in an Indemnifiable Capacity as to a constituent corporation shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would if such person had served the resulting or surviving corporation in the same capacity;

(b) "Other Enterprise" or "Other Enterprises" shall include, without limitation, any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise;

(c) "fines" shall include any excise taxes assessed against a person with respect to an employee benefit plan;

(d) "defense" shall include investigations of any threatened, pending or completed action, suit or proceeding as well as appeals thereof and shall also include any defensive assertion of a cross-claim or counterclaim;

(e) “serving at the request of the Corporation” shall include any service by a person in an Indemnifiable Capacity which imposes duties on, or involves services by, such person with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” as referred to in this Article V; and

(f) “Indemnifiable Capacity” shall include service by a person as a director or officer of the Corporation, or, at the Corporation’s request, service by a person as a director, officer, trustee or in any other comparable position of an Other Enterprise.

For the purpose of this Article V, unless the person described in Section 4 making a determination as to the availability of indemnification shall determine otherwise, any director, officer, employee or agent of the Corporation serving as a director, officer, trustee or in any other comparable position of an Other Enterprise of which the Corporation, directly or indirectly, is a shareholder or creditor, or in which the Corporation is in any way interested, shall be presumed to be serving as such at the request of the Corporation. In all other instances where any person shall serve as a director, officer, trustee or in any other comparable position of an Other Enterprise, if it is not otherwise established that such person is or was serving at the request of the Corporation, the persons described by Section 4 making a determination as to the availability of indemnification shall determine whether such person is or was serving at the request of the Corporation, and it shall not be necessary to show any actual or prior request for such service, which determination shall be final and binding on the Corporation and the person seeking indemnification.

**Section 9. Severability.** If any provision of this Article V or the application of any such provision to any person or circumstance is held invalid, illegal or unenforceable for any reason whatsoever, the remaining provisions of this Article V and the application of such provision to other persons or circumstances shall not be affected thereby and, to the fullest extent possible, the court finding such provision invalid, illegal or unenforceable shall modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to persons subject to indemnification hereby within the bounds of validity, legality and enforceability. Without limiting the generality of the foregoing, if any person who is or was serving in an Indemnifiable Capacity is entitled under any provision of this Article V to indemnification by the Corporation of some or a portion of the judgments, amounts paid in settlement, attorneys’ fees, ERISA excise taxes or penalties, fines or other expenses actually and reasonably incurred by any such person in connection with any threatened, pending or completed action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding), whether civil, criminal, administrative, investigative or appellate, but not, however, for all of the total amount thereof, the Corporation shall nevertheless indemnify such person for the portion thereof to which such person is entitled.

## ARTICLE VI

### CERTIFICATES FOR SHARES AND THEIR TRANSFER

**Section 1. Payment for Shares of Stock.** The Corporation shall not issue shares of stock of the Corporation except for money paid, labor done or property actually received or in consideration of valid bona fide antecedent debts. No note or obligation given by any shareholder, whether secured by deed of trust, mortgage or otherwise, shall be considered as payment of any part of any share or shares, and no loan of money for the purpose of such payment shall be made by the Corporation.

**Section 2. Certificates for Shares.** Shares of the Corporation's stock may be certificated or uncertificated, as provided under Missouri law. Certificates representing shares of the Corporation shall be in such form as may be determined by the Board of Directors. Such certificates shall be signed by the Chairman of the Board or the President and by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Corporation, provided that such seal may be a facsimile and where any such certificate is countersigned by a transfer agent, other than the Corporation or its employees, the signatures of the transfer agent and said officers upon such certificate may be facsimiles. In case any such officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the Corporation. All certificates surrendered to the Corporation or its transfer agent for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except as provided in Section 3.

**Section 3. Transfer of Shares.** Transfers of shares of the Corporation shall be made only on the books of the Corporation by the holder of record thereof or by his or her legal representative, who shall furnish proper evidence of authority to transfer, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. The stock record book and other transfer records shall be in the possession of the Secretary or of a transfer agent for the Corporation. The Corporation, by resolution of the Board of Directors, may from time to time appoint a transfer agent and, if desired, a registrar, under such arrangements and upon such terms and conditions as the Board deems advisable, but until and unless the Board appoints some other person, firm or corporation as its transfer agent (and upon the revocation of any such appointment, thereafter until a new appointment is similarly made) the Secretary of the Corporation shall be the transfer agent of the Corporation without the necessity of any formal action of the Board, and the Secretary, or any person designated by the Secretary, shall perform all of the duties of such transfer agent.

**Section 4. Lost or Destroyed Certificates.** In case of the loss or destruction of any certificate for shares of stock of the Corporation, another may be issued in its place upon proof of such loss or destruction and upon the giving of a satisfactory bond of indemnity to the Corporation and the transfer agent and registrar, if any, in such sum as the Board of Directors may provide; provided, however, that a new certificate may be issued without requiring a bond when in the

judgment of the Board it is proper to do so.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 1. Fiscal Year.** The fiscal year of the Corporation shall begin on the first day of January in each year and end on the thirty-first day of December in each year, or such other period of twelve (12) months as the Board of Directors may determine.

**Section 2. Dividends.** The Board of Directors may from time to time declare, and the Corporation may pay dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its Articles of Incorporation.

**Section 3. Corporate Seal.** The Board of Directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal — Missouri." Such seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or in any manner reproduced upon the document to be sealed.

#### **Section 4. Contracts with Officers or Directors or their Affiliates.**

(a) No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or any committee thereof which authorizes the contract or transaction, or solely because such persons or their votes are counted for such purpose, if:

(i) The material facts as to such person's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or such committee, and the Board or such committee in good faith authorized the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(ii) The material facts as to such person's relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

(iii) The contract or transaction is fair as to the Corporation as of the time it is authorized or approved by the Board of Directors, a committee thereof, or the shareholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee which authorized the contract or

transaction.

**Section 5. Depositories.** The moneys of the Corporation shall be deposited in the name of the Corporation in such bank or banks or other depositories as the Board of Directors shall designate, and shall be drawn out only by check or draft signed by persons designated by resolution adopted by the Board. Notwithstanding the foregoing, the Board may by resolution authorize an officer or officers of the Corporation to designate any bank or banks or other depositories in which moneys of the Corporation may be deposited, and to designate the persons who may sign checks or drafts on any particular account or accounts of the Corporation, whether created by direct designation of the Board or by an authorized officer or officers as aforesaid.

**Section 6. Amendments.** Except as may be specified in Article V of these Bylaws, these Bylaws may from time to time be altered, amended or repealed, or new Bylaws may be adopted, in the manner provided in the Articles of Incorporation or by law.

# # #

**EPIQ SYSTEMS, INC.  
1995 STOCK OPTION PLAN  
AS AMENDED THROUGH JUNE 2, 2010**

**I. PURPOSE**

The purposes of the EPIQ Systems, Inc. 1995 Stock Option Plan (the "Plan") are to: (1) closely associate the interests of the directors, officers and all other employees of EPIQ Systems, Inc. (the "Corporation") with the interests of the shareholders by reinforcing the relationship between participants' rewards and shareholder gains; (2) provide directors, officers and all other employees with an equity ownership in the Corporation commensurate with corporate performance, as reflected in increased shareholder value; (3) maintain competitive compensation levels; and (4) provide an incentive to officers and all other employees for continuous employment with the Corporation.

**II. ADMINISTRATION**

(a) The Plan shall be administered by the Board of Directors of the Corporation (the "Board") or a Stock Option Plan Committee ("Committee") of the Board. Unless the Committee is composed solely of not less than two members of the Board who qualify as "Non-Employee Directors" under Rule 16b-3 or its successors promulgated under the Securities Exchange Act of 1934, as amended ("Rule 16b-3"), all grants of stock options under the Plan to officers and directors of the Corporation shall be made by the Board. (The administrator of the Plan shall be referred to herein as the "Committee", regardless of whether the Plan is administered by the Board or the Committee). In addition to its duties with respect to the Plan stated elsewhere in the Plan, the Committee shall have full authority, consistent with the Plan, to interpret the Plan, to promulgate such rules and regulations with respect to the Plan as it deems desirable, to delegate its ministerial responsibilities hereunder to appropriate persons and to make all other determinations necessary or desirable for the administration of the Plan. All decisions, determinations and interpretations of the Committee shall be binding upon all persons.

(b) Stock options granted pursuant to the Plan ("Options") shall be either incentive stock options ("ISOs") intended to qualify under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), or nonqualified stock options ("NSOs") not intended to qualify under Section 422 of the Code. References in this Plan to Options shall include both ISOs and NSOs.

(c) The Committee shall administer the Plan in a manner necessary to establish and maintain the Options intended to constitute ISOs as ISOs, and the Options intended to constitute NSOs as NSOs. Accordingly, only employees of the Corporation will be eligible for grants of ISOs. However, the Corporation makes no representation that the Options designated as ISOs and the Options designated as NSOs will qualify at the time of grant as ISOs and NSOs, respectively, or will continue to qualify as ISOs and NSOs respectively. Nor does the Corporation make any representation concerning the tax consequences to any person upon receipt or exercise of any Option hereunder or the subsequent sale of Common Stock acquired thereunder.

**III. SHARES SUBJECT TO THE PLAN**

Shares of common stock that may be issued under the Plan shall be the common stock, one cent (\$.01) par value, of the Corporation ("Common Stock"). The aggregate number of shares of Common Stock, subject to adjustment pursuant to Article XVI, which may be delivered on exercise of the Options is 4,500,000 and such amounts of shares of Common Stock shall be, and hereby are reserved for such purpose. Such shares may be previously issues shares reacquired by the Corporation or authorized but unissued shares. If any Option expires, terminates or is canceled for any reason, without having been exercised in full, the shares

covered by the unexercised portion of such Option shall again be available for Options, within the limit specified above.

#### **IV. PARTICIPANTS**

All members of the Board and all employees of the Corporation, or, if applicable, its subsidiaries, including employees who are members of the Board, shall be eligible to participate in the Plan; provided, however, that only employees of the Corporation shall be granted ISOs. Subject to the foregoing, the Committee shall, from time to time, determine, in its discretion, the directors and employees, who shall be eligible for participation in the Plan (the "Participants"). (For purposes of the Plan, the term "Participant(s)" shall, when appropriate, include any person permitted to exercise an Option in accordance with the terms of the Plan.) A member of the Board who is not an employee of the Corporation shall not be eligible to receive ISOs.

#### **V. GRANTS OF OPTIONS**

(a) The Committee shall in its discretion determine the time or times when Options shall be granted and the number of shares of Common Stock to be subject to each Option, except that no Option may be granted more than ten years after the effective date hereof.

(b) The Committee may in its discretion grant to Participants who are employees of the Corporation either ISOs, NSOs or a combination of both and shall at the time the Option is granted designate whether the Option is an ISO or NSO.

(c) The Committee may only grant NSOs to Participants who are not employees of the Corporation.

(d) At any given time, a share of Common Stock may be subject to only one of the two types of Options that may be issued under the Plan.

(e) With respect to ISOs granted under the Plan, the aggregate fair market value (determined as of the date the Option is granted) of the Common Stock with respect to which ISOs are exercisable for the first time by the Participant during any calendar year under all stock option plans of the Corporation and its subsidiaries shall not exceed \$100,000. Notwithstanding the provisions for acceleration of the date an Option is first exercisable in Article VII and Article VIII, in no event shall the date that an ISO is first exercisable be accelerated under this Plan if the acceleration would cause an ISO of a Participant to exceed the limit set forth in this paragraph.

(f) No Option intended to constitute an ISO shall be granted to an employee who, at the time the Option is granted, owns (within the meaning of Section 422(b)(6) of the Code) Common Stock possessing more than 10 percent of the total combined voting power of all classes of stock of the Corporation or, if applicable, any of its subsidiaries (hereinafter referred to as a "Ten Percent Shareholder") unless (1) the purchase price of the Common Stock subject to such Option shall be, subject to adjustment pursuant to Article XVI, at least 110 percent of the fair market value of the Common Stock on the day the Option is granted determined in accordance with Article VI which relates to the method for determining the fair market value of the Common Stock on the date the ISO is granted, and (2) the Option by its terms is not exercisable after the expiration of five years from the date such Option is granted.

(g) Each Option shall be evidenced by a written Option Agreement which shall (1) state the terms and conditions of the Option in accordance with the Plan; and (2) contain such additional provisions as may be required under applicable laws, regulations, and rules or otherwise consistent with the terms of the Plan as the Committee may determine.

## VI. OPTION PRICE

(a) The purchase price of a share of Common Stock subject to an NSO shall be, subject to adjustment pursuant to Article XVI, an amount equal to the fair market value of the Common Stock on the day the NSO is granted.

(b) Except as provided in paragraph (f) of Article V relating to ISOs issued to Ten Percent Shareholders, the purchase price of a share of Common Stock subject to an ISO shall be, subject to adjustment pursuant to Article XVI, an amount equal to the fair market value of the Common Stock on the day the ISO is granted.

(c) The fair market value shall be the closing price at which the Common Stock is traded on the day the NSO or ISO is granted. For this purpose, the closing price of the Common Stock on any business day shall be (i) if such Common Stock is listed or admitted for trading on any United States national securities exchange, or if actual transactions are otherwise reported on a consolidated transaction reporting system, the last reported sale price of Common Stock on such exchange or reporting system, as reported in any newspaper of general circulation, (ii) if the Common Stock is quoted on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"), or any similar system of automated dissemination of quotations of securities prices in common use, the closing bid quotation for such day of the Common Stock on such system, or (iii) if neither clause (i) or (ii) is applicable, the mean between the high bid and low ask quotations for the Common Stock as reported by the National Quotation Bureau, Incorporated if at least two securities dealers have inserted both bid and ask quotations for the Common Stock on at least 5 of the 10 preceding days.

(d) Except for adjustments pursuant to Article XVI, the purchase price for any outstanding NSO or ISO granted under the Plan may not be decreased after the date of grant nor may an outstanding NSO or ISO granted under the Plan be surrendered to the Company as consideration for the grant of a new option with a lower exercise price.

## VII. OPTION PERIOD; EXERCISE RIGHTS

(a) Except as provided in paragraph (f) of Article V relating to ISOs issued to Ten Percent Shareholders, each Option shall be exercisable for a term as the Committee shall determine, but not more than 10 years from the date it is granted, and shall be subject to earlier termination as provided in Article VIII.

(b) Unless specifically provided by the Committee in its sole discretion, an Option shall become exercisable upon its grant.

## VIII. EXERCISE RIGHTS UPON TERMINATION OF EMPLOYMENT

(a) If a Participant terminates employment on account of becoming disabled, the Participant may exercise the Option in whole or in part within one year after the date of disability, but in no event later than the date on which it would have expired if the Participant had not become disabled.

For this purpose, a Participant shall be deemed to be disabled if he or she is determined to be disabled for purposes of meeting any insurance requirements under policies provided by the Corporation. If no such policies are in effect, disability shall have the same meaning as set forth in Section 22(e) of the Code.

(b) If a Participant dies during a period in which he or she is entitled to exercise an Option (including the periods referred to in paragraphs (a) and (d) of this Article), the Option may be exercised at any time within its remaining term as shall be prescribed in the Option Agreement, but in no event later than the date on which it would have expired if the Participant had lived, or one year after the Participant's death, whichever date is earlier, by the Participant's executor or administrator or by any person or persons who shall

have acquired the Option directly from the Participant by will or the laws of descent and distribution. The Option may be exercised in whole or in part.

(c) If a Participant's employment with the Corporation or a subsidiary shall be terminated for cause, he or she shall forfeit any and all outstanding Option rights and such rights shall be deemed to have lapsed for purposes hereof as of the date of the Participant's termination of service.

(d) If a Participant ceases to be employed by the Corporation or a subsidiary for any reason other than disability, death or termination for cause during a period in which he or she is entitled to exercise an Option, the Participant's Option shall terminate three months after the date of such cessation of employment, but in no event later than the date on which it would have expired if such cessation of employment had not occurred. During such period the Option may be exercised only to the extent that the Participant was entitled to do so at the date of cessation of employment. The employment of a Participant shall not be deemed to have ceased upon his or her absence from the Corporation or a subsidiary on a leave of absence granted in accordance with the usual procedures of the Corporation or such subsidiary.

(e) No acceleration of the exercise date of an ISO shall occur pursuant to this Article if such earlier exercise would cause an ISO to violate paragraph (e) of Article V.

#### **IX. METHOD OF EXERCISE**

An Option shall be deemed exercised when (i) the Corporation has received written notice of such exercise in accordance with the terms of the Option, (ii) full payment of the aggregate exercise price of the shares of Common Stock as to which the Option is exercised has been made, and (iii) arrangements that are satisfactory to the Committee in its sole discretion have been made for the Participant's payment to the Corporation of the amount that is necessary for the Corporation to withhold taxes in accordance with applicable Federal, state or local tax withholding requirements. The exercise price of any share of Common Stock purchased, and any required tax payment, shall be paid in cash, by the tender of mature shares of Common Stock, or both. If payment is made in cash, it may be made by certified or official bank check, personal check or money order. If payment is made by the tender of mature shares of Common Stock, the fair market value of each such share shall be determined as of the day the shares are tendered for payment, in a manner consistent with the determination of fair market value under paragraph (c) of Article VI. Any excess of the value of the tendered shares over the purchase price will be returned to the Participant as follows:

(i) Any whole shares remaining in excess of the purchase price will be returned to the Participant in kind, and may be represented by one or more certificates as determined by the Corporation in its sole discretion.

(ii) Any partial Shares remaining in excess of the purchase price will be returned to the Participant in cash.

No Participant shall be deemed to be a holder of any shares of Common Stock subject to an Option unless and until a stock certificate or certificates for such shares are issued to such person(s) under the terms of the Plan. No adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities or other property) or distributions or other rights for which the record date is prior to the date such stock certificate is issued, except as expressly provided in Article XVI.

For purposes of this Article IX, "mature shares" shall mean those shares of Common Stock held by Participant for at least six (6) months, with the measurement of the beginning of such six (6) month period commencing with those shares owned by Participant.

## **X. WITHHOLDING TAXES**

Whenever the Corporation proposes or is required to issue or transfer shares of Common Stock under the Plan, the Corporation shall have the right to require the Participant to remit to the Corporation an amount sufficient to satisfy any Federal, state and/or local withholding tax requirements prior to the delivery of any certificate or certificates for such shares. Alternatively, the Corporation may issue or transfer such shares of Common Stock net of the number of shares sufficient to satisfy the withholding tax requirements. For withholding tax purposes, the shares of Common Stock shall be valued on the date the withholding obligation is incurred.

## **XI. NONTRANSFERABILITY OF OPTIONS**

Each Option shall be nonassignable and nontransferable by the Participant other than by will or the laws of descent and distribution. Each Option shall be exercisable during the Participant's lifetime only by the Participant.

## **XII. REPURCHASE OF SHARES BY CORPORATION**

The Corporation is under no obligation to repurchase Common Stock acquired pursuant to the exercise of an Option hereunder.

## **XIII. USE OF PROCEEDS**

The proceeds received by the Corporation from the sale by it of shares of Common Stock to Participants exercising Options pursuant to the Plan will be used for the general purposes of the Corporation.

## **XIV. LAWS AND REGULATIONS**

(a) If any provision of the Plan should be held invalid or illegal for any reason, such determination shall not affect the remaining provisions hereof, but instead the Plan shall be construed and enforced as if such provision had never been included in the Plan. Without limiting the generality of the foregoing, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3. To the extent any provision of the Plan or action by the Committee hereunder is inconsistent with the foregoing requirements, it shall be deemed null and void.

(b) The determinations and the interpretation and construction of any provision of the Plan by the Committee shall be final and conclusive. This Plan shall be governed by the laws of the State of Missouri. Headings contained in this Plan are for convenience only and shall in no manner be construed as part of this Plan. Any reference to the masculine, feminine, or neuter gender shall be a reference to such other gender as is appropriate.

## **XV. ISSUANCE OF SHARES OF COMMON STOCK**

As a condition of any sale or issuance of shares of Common Stock upon exercise of any Option, the Committee may require such agreements or undertakings, if any, as the Committee may deem necessary or advisable to assure compliance with any applicable law or regulation include, but not limited to, the following:

(a) a representation and warranty by the Participant to the Corporation, at the time any Option is exercised, that the Participant is acquiring the shares of Common Stock to be issued for investment and not with a view to, or for sale in connection with, the distribution of any such shares; and

(b) a representation, warranty and/or agreement to be bound by any legends that are, in the opinion of the Committee, necessary or appropriate to comply with the provisions of any securities law deemed by the Committee to be applicable to the issuance of the shares of Common Stock and are endorsed upon the share certificates.

#### **XVI. ADJUSTMENT UPON CHANGES IN CAPITALIZATION**

(a) In the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, distribution of assets, or any other change in the corporate structure or shares of the Company, the Committee, as necessary to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, shall appropriately and equitably make such adjustment in the number and kind of Shares available for issuance under this Plan (including, without limitation, the total number of Shares available for issuance under this Plan pursuant to Section III), the number and kind of options, and the exercise price of outstanding options; provided, in each case, that with respect to grants of ISOs intended to qualify as ISOs after such adjustment, no such adjustment shall be authorized to the extent such adjustment would cause the Incentive Stock Option to violate Section 424(a) of the Code. Any such adjustment shall be final, conclusive and binding for all purposes of this Plan.

(b) Except as otherwise expressly provided herein, the issuance by the Corporation of shares of its capital stock of any class, or securities convertible into shares of capital stock of any class, either in connection with a direct sale or upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Corporation convertible into such shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or exercise price of the shares of Common Stock then subject to outstanding Options granted under the Plan.

(c) Without limiting the generality of the foregoing, the existence of outstanding Options granted under the Plan shall not affect in any manner the right or power to the Corporation to make, authorize or consummate (i) any or all adjustments, recapitalizations, reorganizations or other changes in the Corporation's capital structure or its business; (ii) any merger or consolidation of the Corporation; (iii) any issue by the Corporation of debt securities, or preferred or preference stock that would rank above the shares of Common Stock subject to outstanding Options; (iv) the dissolution or liquidation of the Corporation; (v) any sale, transfer or assignment of all or any part of the assets or business of the Corporation; or (vi) any other corporate act or proceedings, whether of a similar character or otherwise.

#### **XVII. NO EMPLOYMENT RIGHTS**

Nothing in the Plan shall confer upon any employee of the Corporation or of a subsidiary, if applicable, any right to continued employment, or interfere with the right of the Corporation or a subsidiary to terminate his or her employment at any time, for any reason.

#### **XVIII. TERM OF PLAN; TERMINATION; AMENDMENTS**

(a) This Plan is effective as of October 17, 1995 (the "Effective Date"), the date of its original adoption by the unanimous consent of the Board and the unanimous consent of the Shareholders of the Corporation. This Plan shall continue in effect until all Options granted hereunder have expired or been exercised, unless sooner terminated under the provisions relating thereto. No Option shall be granted after 10 years from the Effective Date.

(b) The Board may from time to time amend, terminate or suspend the Plan or an Option, provided, however that, except to the extent provided in Article XVI, no such amendment may (i) without approval by the Corporation's shareholders, increase the number of shares of Common Stock reserved for Options or change the class of persons eligible to receive Options or involve any other change or modification requiring shareholder approval under Rule 16b-3, (ii) permit the granting of Options that expire beyond the

maximum period described in Article V, (iii) extend the termination date of the Plan as set forth in Article V, (iv) cause the Plan to be ineligible to issue ISOs, (v) without approval by the Corporation's shareholders, amend any outstanding NSO or ISO in a manner that would be deemed to be a repricing under the rules of the New York Stock Exchange or NASDAQ, (vi) without approval by the Corporation's shareholders, amend Article VI, (vii) without approval by the Corporation's shareholders, materially increase in any other way the benefits accruing to Participants or (viii) except to the extent otherwise specifically provided in the Plan, substantially impair any Option previously granted to a Participant without the consent of such Participant. Any termination or suspension of the Plan shall not affect Options already granted and such Options shall remain in full force and effect as if this Plan had not been terminated or suspended. No Option may be granted while the Plan is suspended or after it is terminated.

(c) Except as set forth herein, the Board or the Committee, as the case may be, may at any time or times amend the Plan, or amend any outstanding Option or Options for the purpose of satisfying the requirements of any changes in applicable laws or regulations or for any other purpose which at the time may be permitted by law. In the event that applicable rules or regulations are promulgated by the Internal Revenue Service which permit the acceleration of the date an Option is first exercisable without violating the \$100,000 limit described in paragraph (e) of Article V, the Committee is authorized to act on behalf of the Board in amending the Plan to permit acceleration in conformity with such rules or regulations.

(d) Nothing contained in this Plan shall be construed to prevent the Corporation or any subsidiary, if applicable, from taking any corporate action which is deemed by the Corporation or any such subsidiary to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any award made under the Plan. No employee, beneficiary, other person shall have any claim against the Corporation or any subsidiary as a result of any such action.

#### **XIX. INDEMNIFICATION OF COMMITTEE AND BOARD**

The Corporation may, consistent with applicable law, indemnify members of the Committee against any liability, loss or other financial consequence suffered by them with respect to any act or omission of the Committee or its members relating to the Plan to the same extent and subject to the same conditions as specified in the indemnity provisions contained in the By-Laws of the Corporation.

#### **XX. INTERPRETATION**

(a) If any provision of the Plan should be held invalid or illegal for any reason, such determination shall not affect the remaining provisions hereof, but instead the Plan shall be construed and enforced as if such provision had never been included in the Plan. Without limiting the generality of the foregoing, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors promulgated under the Securities Exchange Act of 1934 and, in the case of ISOs, with all applicable conditions of Section 422 of the Code or its successors and regulations promulgated thereunder. To the extent any provision of the Plan or action by the Committee or Board hereunder is inconsistent with the foregoing requirements, it shall be deemed null and void.

(b) The determinations and the interpretation and construction of any provision of the Plan by the Committee shall be final and conclusive.

EPIQ SYSTEMS, INC.  
2004 EQUITY INCENTIVE PLAN

(Amended and Restated, Effective June 2, 2010)

1. Purpose.

This plan shall be known as the Epiq Systems, Inc. Amended and Restated Equity Incentive Plan (this “Plan”). The purpose of this Plan shall be to promote the long-term growth and profitability of Epiq Systems, Inc. (the “Company”) and its Subsidiaries by (i) providing certain directors, officers and employees of, and certain other individuals who perform services for, or to whom an offer of employment has been extended by, the Company and its Subsidiaries with incentives to maximize stockholder value and otherwise contribute to the success of the Company and (ii) enabling the Company to attract, retain and reward the best available persons for positions of responsibility. Grants of incentive stock options, non-qualified stock options, stock appreciation rights (“SARs”), either alone or in tandem with options, restricted stock, or any combination of the foregoing may be made under this Plan.

2. Definitions .

(a) “Award” means any Non-Qualified Stock Option, Incentive Stock Option, Stock Appreciation Right, Restricted Stock, Shares, cash or Annual Incentive Award.

(b) “Annual Incentive Award” means a performance bonus determined under **Section 9** of this Plan that is a Restricted Stock or cash bonus awards.

(c) “Board of Directors” and “Board” mean the board of directors of the Company.

(d) “Cause,” unless otherwise defined in a participant’s award grant agreement or in a participant’s written employment arrangement with the Company or any of its Subsidiaries in effect on the Grant Date (as amended from time to time thereafter), means the occurrence of one or more of the following events:

(i) Conviction of a felony or any crime or offense lesser than a felony involving the property of the Company or a Subsidiary; or

(ii) Conduct that has caused demonstrable and serious injury to the Company or a Subsidiary, monetary or otherwise; or

(iii) Willful refusal to perform or substantial disregard of duties properly assigned, as determined by the Company; or

(iv) Breach of duty of loyalty to the Company or a Subsidiary or other act of fraud or dishonesty with respect to the Company or a Subsidiary.

The definition of Cause set forth in a participant’s award grant agreement shall control if such definition is different from the definition of Cause set forth in this Plan.

(e) “Change in Control” means the occurrence of one of the following events:

(i) if any “person” or “group” as those terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successors thereto is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act or any successor thereto), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding voting securities; or

(ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new directors whose election by the Board or nomination for election by the Company's stockholders was approved by at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election was previously so approved, cease for any reason to constitute a majority thereof; or

(iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation (A) which would result in all or a portion of the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (B) by which the corporate existence of the Company is not affected and following which the Company's chief executive officer and directors retain their positions with the Company (and constitute at least a majority of the Board); or

(iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all the Company's assets.

(f) "Code" means the Internal Revenue Code of 1986, as amended.

(g) "Committee" means the Compensation Committee of the Board or such other committee that consists solely of two or more members of the Board, each of whom is a "Non-Employee Director" within the meaning of SEC Rule 16b-3 and is an "outside director" within the meaning of Treasury Regulation §1.162-27(e)(3); provided that, if for any reason the Committee shall not have been appointed by the Board to administer this Plan, all authority and duties of the Committee under this Plan shall be vested in and exercised by the Board, and the term "Committee" shall be deemed to mean the Board for all purposes herein.

(h) "Common Stock" means the Common Stock, par value \$0.01 per share, of the Company, and any other shares into which such stock may be changed by reason of a recapitalization, reorganization, merger, consolidation or any other change in the corporate structure or capital stock of the Company.

(i) "Competition" is deemed to occur if a person whose employment with the Company or its Subsidiaries has terminated obtains a position as a full-time or part-time employee of, as a member of the board of directors of, or as a consultant or advisor with or to, or acquires an ownership interest in excess of 5% of, a corporation, partnership, firm or other entity that engages in any of the businesses of the Company or any Subsidiary with which the person was involved in a management role at any time during his or her last five years of employment with or other service for the Company or any Subsidiaries.

(j) "Covered Employee" is any Eligible Employee who (i) as of the close of the taxable year, is the chief executive officer of the Company or is an individual acting in that capacity, or (ii) the total compensation of the employee for the taxable year is required to be reported to shareholders under the executive compensation disclosure rules under the Securities Exchange Act of 1934.

(k) "Disability" means a disability that would entitle an eligible participant to payment of monthly disability payments under any Company long-term disability plan or as otherwise determined by the Committee.

(l) "Eligible Person" means those directors (including Non-Employee Directors), officers (including non-employee officers) and employees of, and other individuals performing services for, or to whom an offer of employment has been extended by, the Company and its Subsidiaries selected by the Committee (including participants located outside the United States).

- (m) “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- (n) “Family Member” has the meaning given to such term in General Instructions A.1(a)(5) to Form S-8 under the Securities Act of 1933, as amended, and any successor thereto.
- (o) “Fair Market Value” of a share of Common Stock of the Company means, as of the date in question, the officially-quoted closing selling price of the stock (or if no selling price is quoted, the bid price) on the principal securities exchange on which the Common Stock is then listed for trading (including for this purpose the NASDAQ National Market) (the “Market”) for the applicable trading day or, if the Common Stock is not then listed or quoted in the Market, the Fair Market Value shall be the fair value of the Common Stock determined in good faith by the Committee; provided, however, that when shares received upon exercise of an option are immediately sold in the open market, the net sale price received may be used to determine the Fair Market Value of any shares used to pay the exercise price or applicable withholding taxes and to compute the withholding taxes.
- (p) “Grant Date” means the date on which the Board or the Committee determines and approves the grant of an Award. Such approval shall include, but not be limited to, a final determination as to the Award recipient(s), exercise price (if any), number of Awards or shares subject to an Award granted to each recipient and the type of such Awards (e.g., ISO, NSO, Restricted Stock).
- (q) “Incentive Stock Option” means an option conforming to the requirements of Section 422 of the Code and any successor thereto.
- (r) “Non-Employee Director” has the meaning given to such term in Rule 16b-3 under the Exchange Act and any successor thereto.
- (s) “Non-qualified Stock Option” means any stock option other than an Incentive Stock Option.
- (t) “Performance-Based Exception” means the performance-based exception from the tax deductibility limitations of Code Section 162(m) contained in Code Section 162(m)(4)(C) (including the special provision for options thereunder).
- (u) “Performance Goals” means the objective criteria determined by the Committee, the degree of attainment of which will affect the amount of an Annual Incentive Award. Performance Goals may contain threshold and maximum levels of achievement and must be based upon one or more of the Performance Measures set forth in **Section 9(c)(i)** .
- (v) “Performance Period” means that period established by the Committee at the time any Award is granted or at any time thereafter during which the attainment of performance goals specified by the Committee with respect to that Award are to be measured. Except as provided in **Section 9** , a Performance Period may be a year or a longer or shorter period.
- (w) “Retirement” means retirement as defined under any Company pension plan or retirement program or termination of one’s employment on retirement with the approval of the Committee.
- (x) “Shares” means any share of the Common Stock of the Company.
- (y) “Subsidiary” means a corporation or other entity of which outstanding shares or ownership interests representing 50% or more of the combined voting power of such corporation or other entity entitled to elect the management thereof, or such lesser percentage as may be approved by the Committee, are owned directly or indirectly by the Company.
- (z) “Year” means the fiscal year of the Company.

3. Administration .

The Plan shall be administered by the Committee; provided that the Board may, in its discretion, at any time and from time to time, resolve to administer this Plan, in which case the term “Committee” shall be deemed to mean the Board for all purposes herein. Subject to the provisions of this Plan, the Committee shall be authorized to:

- (i) select persons to participate in this Plan;
- (ii) determine the form and substance of grants made under this Plan to each participant, and the conditions and restrictions, if any, subject to which such grants will be made;
- (iii) certify that the conditions and restrictions applicable to any grant have been met;
- (iv) modify the terms of grants made under this Plan;
- (v) interpret this Plan and grants made thereunder;
- (vi) make any adjustments necessary or desirable in connection with grants made under this Plan to eligible participants located outside the United States; and
- (vii) adopt, amend, or rescind such rules and regulations, and make such other determinations, for carrying out this Plan as it may deem appropriate.

Decisions of the Committee on all matters relating to this Plan shall be in the Committee’s sole discretion and shall be conclusive and binding on all parties. The validity, construction, and effect of this Plan and any rules and regulations relating to this Plan shall be determined in accordance with applicable federal and state laws and rules and regulations promulgated pursuant thereto. No member of the Committee and no officer of the Company shall be liable for any action taken or omitted to be taken by such member, by any other member of the Committee or by any officer of the Company in connection with the performance of duties under this Plan, except for such person’s own willful misconduct or as expressly provided by statute.

The expenses of this Plan shall be borne by the Company. The Plan shall not be required to establish any special or separate fund or make any other segregation of assets to assume the payment of any Award under this Plan, and rights to the payment of such awards shall be no greater than the rights of the Company’s general creditors.

4. Shares Available for this Plan .

Subject to adjustments as provided in **Section 15** , an aggregate of 5,000,000 shares of Common Stock (the “Shares”) may be issued pursuant to this Plan. Such Shares may be in whole or in part authorized and unissued or held by the Company as treasury shares. If any grant under this Plan expires or terminates unexercised, becomes unexercisable or is forfeited as to any Shares, or is tendered or withheld as to any shares in payment of the exercise price of the grant or the taxes payable with respect to the exercise, then such unpurchased, forfeited, tendered or withheld Shares shall thereafter be available for further grants under this Plan unless, in the case of options granted under this Plan, related SARs are exercised.

Without limiting the generality of the foregoing provisions of this **Section 4** or the generality of the provisions of **Sections 3, 6 or 17** or any other section of this Plan, the Committee may, at any time or from time to time, and on such terms and conditions (that are consistent with and not in contravention of the other provisions of this Plan) as the Committee may, in its sole discretion, determine, enter into agreements (or take other actions with respect to the options) for new options containing terms (including exercise prices) more (or less) favorable than the outstanding options.

5. Participation.

Participation in this Plan shall be limited to Eligible Persons. Nothing in this Plan or in any grant thereunder shall confer any right on a participant to continue in the employ as a director or officer of or in the performance of services for the Company or shall interfere in any way with the right of the Company to terminate the employment or performance of services or to reduce the compensation or responsibilities of a participant at any time. By accepting any Award under this Plan, each participant and each person claiming under or through him or her shall be conclusively deemed to have indicated his or her acceptance and ratification of, and consent to, any action taken under this Plan by the Company, the Board or the Committee.

Incentive Stock Options, Non-qualified Stock Options, SARs, alone or in tandem with options, restricted stock awards, or any combination thereof may be granted to such persons and for such number of Shares as the Committee shall determine subject to the terms of this Plan (such individuals to whom grants are made being sometimes herein called “optionees” or “grantees”). Determinations made by the Committee under this Plan need not be uniform and may be made selectively among eligible individuals under this Plan, whether or not such individuals are similarly situated. A grant of any type made hereunder in any one year to an eligible participant shall neither guarantee nor preclude a further grant of that or any other type to such participant in that year or subsequent years.

6. Incentive and Non-qualified Stock Options and SARs.

The Committee may from time to time grant to eligible participants Incentive Stock Options, Non-qualified Stock Options, or any combination thereof; provided that the Committee may grant Incentive Stock Options only to eligible employees of the Company or its Subsidiaries (as defined for this purpose in Section 424(f) of the Code or any successor thereto). In any one calendar year, the Committee shall not grant to any one participant Non-qualified Stock Options, Incentive Stock Options or SARs to purchase a number of shares of Common Stock in excess of 300,000 Shares. The options granted shall take such written form as the Committee shall determine, subject to the following terms and conditions.

It is the Company’s intent that Non-qualified Stock Options granted under this Plan not be classified as Incentive Stock Options, that Incentive Stock Options be consistent with and contain or be deemed to contain all provisions required under Section 422 of the Code and any successor thereto, and that any ambiguities in construction be interpreted in order to effectuate such intent. Each award grant agreement shall specifically indicate whether the option granted is an Incentive Stock Option or a Non-qualified Stock Option. If an Incentive Stock Option granted under this Plan does not qualify as such for any reason, then to the extent of such non-qualification, the stock option represented thereby shall be regarded as a Non-qualified Stock Option duly granted under this Plan, provided that such stock option otherwise meets this Plan’s requirements for Non-qualified Stock Options.

(a) Price. The price per Share deliverable upon the exercise of each option (“exercise price”) shall be established by the Committee and may not be less than 100% of the Fair Market Value of a share of Common Stock as of the Grant Date of the option, and in the case of the grant of any Incentive Stock Option to an employee who, at the time of the grant, owns more than 10% of the total combined voting power of all classes of stock of the Company or any of its Subsidiaries, the exercise price may not be less than 110% of the Fair Market Value of a share of Common Stock as of the Grant Date of the option, in each case unless otherwise permitted by Section 422 of the Code or any successor thereto.

(b) Payment. Options may be exercised, in whole or in part, upon payment of the exercise price of the Shares to be acquired. Unless otherwise determined by the Committee, payment shall be made (i) in cash (including check, bank draft, money order or wire transfer of immediately available funds), (ii) by delivery of outstanding shares of Common Stock with a Fair Market Value on the date of exercise equal to the aggregate exercise price payable with respect to the options exercised, (iii) by simultaneous sale through a broker reasonably acceptable to the Committee of Shares acquired on exercise, as permitted under Regulation T of the Federal Reserve Board, (iv) by authorizing the Company to withhold from issuance a number of Shares issuable upon exercise of the options which, when multiplied by the Fair

Market Value of a share of Common Stock on the date of exercise, is equal to the aggregate exercise price payable with respect to the options so exercised or (v) by any combination of the foregoing.

In the event a grantee elects to pay the exercise price payable with respect to an option pursuant to clause (ii) above, (A) only a whole number of share(s) of Common Stock (and not fractional shares of Common Stock) may be tendered in payment, (B) such grantee must present evidence acceptable to the Company that he or she has owned any such shares of Common Stock tendered in payment of the exercise price (and that such tendered shares of Common Stock have not been subject to any substantial risk of forfeiture) for at least six months prior to the date of exercise, and (C) Common Stock must be delivered to the Company. Delivery for this purpose may, at the election of the grantee, be made either by (1) physical delivery of the certificate(s) for all such shares of Common Stock tendered in payment of the price, accompanied by duly executed instruments of transfer in a form acceptable to the Company, or (2) direction to the grantee's broker to transfer, by book entry, such shares of Common Stock from a brokerage account of the grantee to a brokerage account specified by the Company. When payment of the exercise price is made by delivery of Common Stock, the difference, if any, between the aggregate exercise price payable with respect to the option being exercised and the Fair Market Value of the shares of Common Stock tendered in payment (plus any applicable taxes) shall be paid in cash. No grantee may tender shares of Common Stock having a Fair Market Value exceeding the aggregate exercise price payable with respect to the option being exercised (plus any applicable taxes).

In the event a grantee elects to pay the exercise price payable with respect to an option pursuant to clause (iv) above, (A) only a whole number of Share(s) (and not fractional Shares) may be withheld in payment and (B) such grantee must present evidence acceptable to the Company that he or she has owned a number of shares of Common Stock at least equal to the number of Shares to be withheld in payment of the exercise price (and that such owned shares of Common Stock have not been subject to any substantial risk of forfeiture) for at least six months prior to the date of exercise. When payment of the exercise price is made by withholding of Shares, the difference, if any, between the aggregate exercise price payable with respect to the option being exercised and the Fair Market Value of the Shares withheld in payment (plus any applicable taxes) shall be paid in cash. No grantee may authorize the withholding of Shares having a Fair Market Value exceeding the aggregate exercise price payable with respect to the option being exercised (plus any applicable taxes). Any withheld Shares shall no longer be issuable under such option.

(c) Terms of Options. The term during which each option may be exercised shall be determined by the Committee, but no option shall be exercisable in whole or in part more than ten years after the Grant Date, and no Incentive Stock Option granted to an employee who at the time of the grant owns more than 10% of the total combined voting power of all classes of stock of the Company or any of its Subsidiaries shall be exercisable more than five years after the Grant Date; in each case unless otherwise permitted by Section 422 of the Code or any successor thereto. All rights to purchase Shares pursuant to an option shall, unless sooner terminated, expire at the date designated by the Committee. The Committee shall determine the date on which each option shall become exercisable and may provide that an option shall become exercisable in installments. The Shares constituting each installment may be purchased in whole or in part at any time after such installment becomes exercisable, subject to such minimum exercise requirements as may be designated by the Committee. Prior to the exercise of an option and delivery of the Shares represented thereby, the optionee shall have no rights as a stockholder with respect to any Shares covered by such outstanding option (including any dividend or voting rights).

(d) Limitations on Grants. If required by the Code, the aggregate Fair Market Value (determined as of the Grant Date) of Shares for which Incentive Stock Options are exercisable for the first time by any one participant during any calendar year under all equity incentive plans of the Company and its Subsidiaries (as defined for this purpose in Section 424(f) of the Code or any successor thereto) may not exceed \$100,000.

(e) Termination; Forfeiture.

(i) Death or Disability. If a participant ceases to be a director, officer or employee of the Company and any Subsidiary due to death or Disability, (A) all of the participant's options and SARs that were exercisable on the date of death or Disability shall remain exercisable for, and shall otherwise terminate at the end of, a period of one year from the date of such death or Disability, but in no event after the expiration date of the options or SARs; provided that, in the case of Disability, the participant does not engage in Competition during such one year period unless he or she received written consent to do so from the Board or the Committee, and (B) all of the participant's options and SARs that were not exercisable on the date of death or Disability shall be forfeited immediately upon such death or Disability; provided, however, that such options or SARs may become fully vested and exercisable in the discretion of the Committee. If a participant other than a director, officer or employee of the Company and any Subsidiary ceases to perform services for the Company and any Subsidiary due to death or Disability, the provisions set forth in such participant's award grant agreement shall control. Notwithstanding the foregoing, if the Disability giving rise to the termination of employment is not within the meaning of Section 22(e)(3) of the Code or any successor thereto, Incentive Stock Options not exercised by such participant within 3 months after the date of termination of employment will cease to qualify as Incentive Stock Options and will be treated as Non-qualified Stock Options under this Plan if required to be so treated under the Code.

(ii) Retirement. If a participant ceases to be a director, officer or employee of the Company and any Subsidiary upon the occurrence of his or her Retirement, (A) all of the participant's options and SARs that were exercisable on the date of Retirement shall remain exercisable for, and shall otherwise terminate at the end of, a period of 90 days after the date of Retirement, but in no event after the expiration date of the options or SARs; provided that the participant does not engage in Competition during such 90-day period unless he or she receives written consent to do so from the Board or the Committee, and (B) all of the participant's options and SARs that were not exercisable on the date of Retirement shall be forfeited immediately upon such Retirement; provided, however, that such options or SARs may become fully vested and exercisable in the discretion of the Committee. If a participant other than a director, officer or employee of the Company and any Subsidiary ceases to perform services for the Company and any Subsidiary upon the occurrence of his or her retirement, the provisions set forth in such participant's award grant agreement shall control. Notwithstanding the foregoing, Incentive Stock Options not exercised by such participant within 3 months after Retirement will cease to qualify as Incentive Stock Options and will be treated as Non-qualified Stock Options under this Plan if required to be so treated under the Code.

(iii) Discharge for Cause. If a participant ceases to be a director, officer or employee of, or to perform other services for, the Company or a Subsidiary due to Cause, or if a participant does not become a director, officer or employee of, or does not begin performing other services for, the Company or a Subsidiary for any reason, all of the participant's options and SARs shall expire and be forfeited immediately upon such cessation or non-commencement, whether or not then exercisable.

(iv) Other Termination. Unless otherwise determined by the Committee, if a participant ceases to be a director, officer or employee of the Company or a Subsidiary for any reason other than death, Disability, Retirement or Cause, (A) all of the participant's options and SARs that were exercisable on the date of such cessation shall remain exercisable for, and shall otherwise terminate at the end of, a period of 30 days after the date of such cessation, but in no event after the expiration date of the options or SARs; provided that the participant does not engage in Competition during such 30-day period unless he or she receives written consent to do so from the Board or the Committee, and (B) all of the participant's options and SARs that were not exercisable on the date of such cessation shall be forfeited immediately upon such cessation. If a participant other than a director, officer or employee of the Company and any Subsidiary ceases to perform services for the Company and any Subsidiary for any reason other than death, Disability

Retirement or Cause, the provisions set forth in such participant's award grant agreement shall control.

(v) Change in Control . If there is a Change in Control of the Company, all of the participant's options and SARs shall become fully vested and exercisable upon such Change in Control and shall remain so until the expiration date of the options or SARs, whether or not the grantee is subsequently terminated.

7. Stock Appreciation Rights .

The Committee shall have the authority to grant SARs under this Plan, either alone or to any optionee in tandem with options (either at the time of grant of the related option or thereafter by amendment to an outstanding option). SARs shall be subject to such terms and conditions as the Committee may specify.

No SAR may be exercised unless the Fair Market Value of a share of Common Stock of the Company on the date of exercise exceeds the exercise price of the SAR or, in the case of SARs granted in tandem with options, the exercise price of any options to which the SARs correspond. Prior to the exercise of the SAR and any delivery of the related Shares represented thereby, the participant shall have no rights as a stockholder with respect to Shares covered by such outstanding SAR (including any dividend or voting rights).

SARs granted in tandem with options shall be exercisable only when, to the extent and on the conditions that any related option is exercisable. The exercise of an option shall result in an immediate forfeiture of any related SAR to the extent the option is exercised, and the exercise of an SAR shall cause an immediate forfeiture of any related option to the extent the SAR is exercised.

Upon the exercise of an SAR, the participant shall be entitled to a distribution in an amount equal to the difference between the Fair Market Value of a share of Common Stock on the date of exercise and the exercise price of the SAR or, in the case of SARs granted in tandem with options, the exercise price of any option to which the SAR is related, multiplied by the number of Shares as to which the SAR is exercised. The Committee shall decide whether such distribution shall be in cash, in Shares having a Fair Market Value equal to such amount, or in a combination thereof.

All SARs will be exercised automatically on the last day prior to the expiration date of the SAR or, in the case of SARs granted in tandem with options, any related option, so long as the Fair Market Value of a share of Common Stock on that date exceeds the exercise price of the SAR or any related option, as applicable. An SAR granted in tandem with options shall expire at the same time as any related option expires and shall be transferable only when, and under the same conditions as, any related option is transferable.

8. Restricted Stock .

The Committee may at any time and from time to time grant Shares of restricted stock under this Plan to such participants and in such amounts as it determines. Each grant of restricted stock shall specify the applicable restrictions on such Shares, the duration of such restrictions (which shall be at least six months except as otherwise determined by the Committee or provided in the third paragraph of this **Section 8** ), and the time or times at which such restrictions shall lapse with respect to all or a specified number of Shares that are part of the grant.

The participant will be required to pay the Company the aggregate par value of any Shares of restricted stock (or such larger amount as the Board may determine to constitute capital under Section 154 of the Delaware General Corporation Law, as amended, or any successor thereto) within ten days of the Grant Date, unless such Shares of restricted stock are treasury shares. Unless otherwise determined by the Committee, certificates representing Shares of restricted stock granted under this Plan will be held in escrow by the Company on the participant's behalf during any period of restriction thereon and will bear an appropriate legend specifying the applicable restrictions thereon, and the participant will be required to execute a blank stock power therefor. Except as otherwise provided by the Committee, during such period of restriction the participant shall have all of the rights

of a holder of Common Stock, including but not limited to the rights to receive dividends and to vote, and any stock or other securities received as a distribution with respect to such participant's restricted stock shall be subject to the same restrictions as then in effect for the restricted stock.

Unless otherwise determined by the Committee, immediately prior to a Change in Control during any period of restriction, all restrictions on Shares granted to such participant shall lapse. At such time as a participant ceases to be, or in the event a participant does not become, a director, officer or employee of, or otherwise performing services for, the Company or its Subsidiaries for any reason, unless otherwise determined by the Committee, all Shares of restricted stock granted to such participant on which the restrictions have not lapsed shall be immediately forfeited to the Company.

In any one calendar year, the Committee shall not grant to any one participant Restricted Stock in excess of 150,000 Shares.

9. Annual Incentive Awards and 162(m) Compliance.

(a) Section 162(m) Compliance. If the Committee, in its discretion, determines that it is appropriate to establish an Annual Incentive Award for an Eligible Person, the terms of the Annual incentive Award will comply with this **Section 9**. Annual Incentive Awards are intended to satisfy the Performance-Based Exception. If changes are made to Code Section 162(m) to permit flexibility with respect to an Award or Awards available under this Plan, the Committee may, subject to this **Section 9**, make any adjustments to Annual Incentive Awards as it deems appropriate and as permitted by the changes in Code Section 162(m).

(b) Annual Incentive Award Eligibility and Timing for Establishing Performance Goals.

(i) Eligibility. Subject to and consistent with the provisions of this Plan, Annual Incentive Awards may be granted to an Eligible Employee who is, or is likely to be, as of the end of the tax year in which the Company would claim a tax deduction in connection with the Annual Incentive Award, a Covered Employee in accordance with this **Section 9**.

(ii) Timing. The Committee will designate the individuals eligible to be granted an Annual Incentive Award for a Year and establish the objective Performance Goals for the individuals within the first 90 days of that Year; *provided*, that for a hiring or promotion after that 90-day period that makes any individual eligible to be granted an Annual Incentive Award, the designation shall not be later than the elapse of 25% of the remainder of that Year after such hiring or promotion; *provided further*, that if the Committee designates a Performance Period of less than a full year, the establishment of the Performance Goals by the Committee will be made no later than the elapse of 25% of the Performance Period. The opportunity to be granted an Annual Incentive Award may be evidenced by an award grant agreement, which shall specify the individual's bonus opportunity, the Performance Goals, and such other terms not inconsistent with the Plan as the Committee shall determine.

(c) Performance Goals.

(i) Establishment. Within the time period prescribed in **Section 9(b)(ii)**, the Committee shall establish Performance Goals for the Year (which may be the same or different for some or all Covered Employees) and shall establish the threshold and maximum bonus opportunity for each Covered Employee for the attainment of specified threshold and maximum Performance Goals. Performance Goals and bonus opportunities may be weighted for different factors and measures as the Committee determines. Unless and until the Company's stockholders approve a change in the general Performance Measures set forth in this **Section 9**, for Annual Incentive Awards designed to qualify for the Performance-Based Exception, objective performance criteria

used to establish Performance Goals shall be one or more of the following (each a “Performance Measure”):

- (A) Earnings from continuing operations (either in the aggregate or on a per-Share basis);
- (B) Growth or rate of growth in earnings (either in the aggregate or on a per-Share basis);
- (C) Net income or loss (either in the aggregate or on a per-Share basis);
- (D) Revenues (either operating or in total);
- (E) Growth or rate of growth in revenues (either operating or in total)
- (F) Net cash provided by operating activities;
- (G) Growth or rate of growth in net cash provided by operating activities;
- (H) Free cash flow (either in the aggregate on a per-Share basis);
- (I) Earnings before interest, taxes, depreciation, amortization, and acquisition-related expenses;
- (J) Growth or rate of growth in earnings before interest, taxes, depreciation, amortization, and acquisition-related expenses;
- (K) Earnings from continuing operations (either in the aggregate or on a per-Share basis);
- (L) Reductions in expense levels, determined either on a Company-wide basis or in respect of any one more business units;
- (M) Expense management and employee productivity;
- (N) Stockholder returns (including return on assets, investments, equity, or sales);
- (O) Return measures (including return on assets, equity, or sales);
- (P) Growth or rate of growth in return measures (including return on assets, equity, or sales);
- (Q) Share price (including attainment of a specified per-Share price during the Performance Period; growth measures and total stockholder return or attainment by the Shares of a specified price for a specified period of time);
- (R) Strategic business criteria, consisting of one or more objectives based on meeting specified hiring and/or retention of key employees, business expansion goals, objectively identified project milestones, debt targets, and goals relating to acquisitions or divestitures; and

(S) Achievement of business or operational goals such as market penetration, release of software upgrades, business development and/or regulatory compliance;

*provided* that applicable Performance Measures may be applied on a pre- or post-tax basis; and *provided* further that the Committee may, on the Grant Date of an Annual Incentive Award intended to comply with the Performance-Based Exception, provide that the formula for such Annual Incentive Award include or exclude items to measure specific Performance Measures such as share-based compensation expense, acquisition related expenses, expense resulting from amortization of debt issuance costs or other loan fees, expense resulting from amortization of intangibles, gain or loss on extinguishment of debt, accreted interest expense, charges or credits related to the adjustment of assets or liabilities to fair value (for example, charges related to asset impairments or the mark-to-market adjustment of the convertible debt embedded option), gains or losses resulting from foreign exchange transaction or translation adjustments, restructuring charges, gains or losses from discontinued operations, any unusual or non-recurring charge or credit, extraordinary gains or losses, the current period income statement effect of businesses or assets acquired or divested; expense or income, including the cumulative effect, of any new accounting principle adopted during the year, and, expense or income related to the adoption of new accounting methods or principles.

(ii) Flexibility as to Timing, Weighting, Applicable Business Unit. For Annual Incentive Awards intended to comply with the Performance-Based Exception, the Committee shall set the Performance Goals within the time period prescribed by Section 162(m) of the Code. The levels of performance required with respect to Performance Measures may be expressed in absolute or relative levels and may be based upon a set increase, set positive result, maintenance of the status quo, set decrease or set negative result. Performance Measures may differ for Annual Incentive Awards to different grantees. The Committee shall specify the weighting (which may be the same or different for multiple objectives) to be given to each performance objective for purposes of determining the final amount payable with respect to any such Annual Incentive Award. Any one or more of the Performance Measures may apply to a grantee, to the Company as a whole, to one or more affiliates or to a department, unit, division or function within the Company, within any one or more affiliates or any one or more joint ventures, and may apply either alone or relative to the performance of other businesses or individuals (including industry or general market indices).

(iii) Discretion to Adjust. The Committee shall have the discretion to adjust the determinations of the degree of attainment of the pre-established Performance Goals; *provided*, however, Annual Incentive Award compensation that is designed to qualify for the Performance-Based Exception may not (unless the Committee determines to amend the Annual Incentive Award so that it no longer qualifies for the Performance-Based Exception) be adjusted upward. The Committee retains the discretion to adjust compensation under Annual Incentive Awards downward. The Committee may not, unless the Committee determines to amend the Annual Incentive Award so that it no longer qualifies for the Performance-Based Exception, delegate any responsibility with respect to Annual Incentive Awards intended to qualify for the Performance-Based Exception. All determinations by the Committee as to the achievement of the pre-established Performance Goals must be certified in writing prior to payment of the Annual Incentive Award.

(iv) Alteration of Performance Measures. If applicable laws allow an Annual Incentive Award to qualify for the Performance-Based Exception even if the Committee alters the governing Performance Measures without obtaining stockholder approval, the Committee will have sole discretion to make such changes without obtaining stockholder approval.

(d) Determination of Amount of Annual Incentive Awards.

(i) Restricted Stock Award Limitation. No grantee may be awarded Restricted Stock Annual Incentive Awards in any one year, pursuant to this **Section 9**, in excess of the limitation set forth in **Section 8**.

(ii) Cash Award Limitation. No grantee may be granted cash Annual Incentive Awards, pursuant to this **Section 9**, in any one Year the maximum payout for which, when added to the maximum payout for all other cash Annual Incentive Awards granted to such grantee pursuant to this **Section 9** in the same Year, could exceed 300% of the grantee's annual base salary (up to a maximum of \$1,000,000 of base salary) as of the first day the Year (or, if later, as of the date on which the grantee becomes an employee of the Company or a Subsidiary). If the Performance Period is greater than one year, the 300% limitation will apply separately for each 12 month period in the Performance Period.

(iii) Aggregate Maximum. The Committee may establish guidelines as to the maximum aggregate amount of Annual Incentive Awards payable for any Year.

(e) Committee Certification and Determination of Amount of Annual Incentive Award. The Committee shall determine and certify in writing the degree of attainment of Performance Goals as soon as administratively practicable after the end of each Year but not later than 90 days after the end of that Year. The Committee shall determine an individual's maximum Annual Incentive Award based on the level of attainment of the Performance Goals (as certified by the Committee) and the individual's bonus opportunity. The Committee reserves the discretion to reduce (but not below zero) the amount of an individual's Annual Incentive Award below the maximum Annual Incentive Award. The determination of the Committee to reduce (or not pay) an individual's Annual Incentive Award for a Year will not affect the maximum Annual Incentive Award payable to any other individual. No Annual Incentive Award will be payable to an individual unless at least the threshold Performance Goal is attained.

(f) Payment of Annual Incentive Awards.

(i) Timing. Annual Incentive Awards will be paid as soon as administratively practicable after the Committee determines the amount of the Annual Incentive Award, but not later than 90 days after the Committee certifies the degree of attainment of Performance Goals.

(ii) Form. An individual's Annual Incentive Award for a Year may be paid in cash or Restricted Stock as determined by the Committee at the time of the grant. The Committee may provide in an award grant agreement that payment of an Annual Incentive Award may be deferred in accordance with any rules or procedures that may be established by the Committee from time to time, either before or after the decision or election to defer is made.

(g) Cessation of Services. If an individual ceases to provide services to the Company or a subsidiary in the capacity of an employee or consultant during the Year, the Committee may authorize the payment of an Annual Incentive Award to that individual, and in the absence of the authorization, the individual will receive no Annual Incentive Award for that Year.

10. Withholding Taxes.

(a) Participant Election. Unless otherwise determined by the Committee, a participant may elect to deliver shares of Common Stock (or have the Company withhold shares acquired upon exercise of an option or SAR or deliverable upon grant or vesting of restricted stock, as the case may be) to satisfy, in whole or in part, the amount the Company is required to withhold for taxes in connection with the exercise of an option or SAR or the delivery of restricted stock upon grant or vesting, as the case may be. Such election must be made on or before the date the amount of tax to be withheld is determined. Once made, the election shall be irrevocable. The fair market value of the shares to be withheld or delivered will be the Fair Market Value as of the date the amount of tax to be withheld is determined. In the event a participant

elects to deliver or have the Company withhold shares of Common Stock pursuant to this **Section 10(a)** , such delivery or withholding must be made subject to the conditions and pursuant to the procedures set forth in **Section 6(b)** with respect to the delivery or withholding of Common Stock in payment of the exercise price of options.

(b) Company Requirement. The Company may require, as a condition to any grant or exercise under this Plan or to the delivery of certificates for Shares issued hereunder, that the grantee make provision for the payment to the Company, either pursuant to **Section 10(a)** or this **Section 10(b)** , of federal, state or local taxes of any kind required by law to be withheld with respect to any grant or delivery of Shares. The Company, to the extent permitted or required by law, shall have the right to deduct from any payment of any kind (including salary or bonus) otherwise due to a grantee, an amount equal to any federal, state or local taxes of any kind required by law to be withheld with respect to any grant or delivery of Shares under this Plan.

11. Written Agreement; Vesting.

Each participant to whom a grant is made under this Plan shall enter into a written agreement with the Company that shall contain such provisions, including, without limitation, vesting requirements, consistent with the provisions of this Plan, as may be approved by the Committee. Unless the Committee determines otherwise and except as otherwise provided in **Sections 6, 7 and 8** , in connection with a Change of Control or certain occurrences of termination, no grant under this Plan may be exercised, and no restrictions relating thereto may lapse, within six months of the date such grant is made.

12. Transferability.

Unless the Committee determines otherwise, no option, SAR or restricted stock granted under this Plan shall be transferable by a participant other than by will or the laws of descent and distribution or to a participant's Family Member by gift or a qualified domestic relations order as defined by the Code. Unless the Committee determines otherwise, an option or SAR may be exercised only by the optionee or grantee thereof; by his or her Family Member if such person has acquired the option or SAR by gift or qualified domestic relations order; by the executor or administrator of the estate of any of the foregoing or any person to whom the option is transferred by will or the laws of descent and distribution; or by the guardian or legal representative of any of the foregoing; provided that Incentive Stock Options may be exercised by any Family Member, guardian or legal representative only if permitted by the Code and any regulations thereunder. All provisions of this Plan shall in any event continue to apply to any option, SAR or restricted stock granted under this Plan and transferred as permitted by this **Section 12** , and any transferee of any such option, SAR or restricted stock shall be bound by all provisions of this Plan as and to the same extent as the applicable original grantee.

13. Listing, Registration and Qualification.

If the Committee determines that the listing, registration or qualification upon any securities exchange or under any law of Shares subject to any option, SAR or restricted stock is necessary or desirable as a condition of, or in connection with, the granting of same or the issue or purchase of Shares thereunder, no such option or SAR may be exercised in whole or in part, and no Shares may be issued, unless such listing, registration or qualification is effected free of any conditions not acceptable to the Committee.

14. Transfer of Employee .

The transfer of an employee from the Company to a Subsidiary, from a Subsidiary to the Company, or from one Subsidiary to another, shall not be considered a termination of employment; nor shall it be considered a termination of employment if an employee is placed on military or sick leave or such other leave of absence which is considered by the Committee as continuing intact the employment relationship.

15. Adjustments .

In the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, distribution of assets, or any other change in the corporate structure or shares of the Company, the Committee, as necessary to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, shall appropriately and equitably make such adjustment in the number and kind of Shares available for issuance under this Plan (including, without limitation, the total number of Shares available for issuance under this Plan pursuant to Section 4), and in the number and kind of options, SARs and Shares covered by grants previously made under this Plan, and in the exercise price of outstanding options and SARs; provided, in each case, that with respect to Awards of Incentive Stock Options intended to qualify as Incentive Stock Options after such adjustment, no such adjustment shall be authorized to the extent such adjustment would cause the Incentive Stock Option to violate Section 424(a) of the Code. Any such adjustment shall be final, conclusive and binding for all purposes of this Plan. In the event of any merger, consolidation or other reorganization in which the Company is not the surviving or continuing corporation or in which a Change in Control is to occur, all of the Company's obligations regarding options, SARs and restricted stock that were granted hereunder and that are outstanding on the date of such event shall, on such terms as may be approved by the Committee prior to such event, be assumed by the surviving or continuing corporation or canceled in exchange for property (including cash). Notwithstanding the foregoing, no amendment shall be made to any stock option that would be deemed to be a repricing under the rules of the New York Stock Exchange or the NASDAQ Global Select Market unless such amendment is first subject to and approved by the Company's shareholders.

Without limitation of the foregoing, in connection with any transaction of the type specified by clause (iii) of the definition of a Change in Control, the Committee may, in its discretion, (i) cancel any or all outstanding options under this Plan in consideration for payment to the holders thereof of an amount equal to the portion of the consideration that would have been payable to such holders pursuant to such transaction if their options had been fully exercised immediately prior to such transaction, less the aggregate exercise price that would have been payable therefor, or (ii) if the amount that would have been payable to the option holders pursuant to such transaction if their options had been fully exercised immediately prior thereto would be equal to or less than the aggregate exercise price that would have been payable therefor, cancel any or all such options for no consideration or payment of any kind. Payment of any amount payable pursuant to the preceding sentence may be made in cash or, in the event that the consideration to be received in such transaction includes securities or other property, in cash and/or securities or other property in the Committee's discretion.

16. Amendment and Termination of this Plan .

The Board of Directors or the Committee, without approval of the stockholders, may amend or terminate this Plan, except that no amendment shall become effective without prior approval of the stockholders of the Company if stockholder approval would be required by applicable law or regulations, including if required for continued compliance with the performance-based compensation exception of Section 162(m) of the Code or any successor thereto, under the provisions of Section 422 of the Code or any successor thereto, or by any listing requirement of the principal stock exchange or market on which the Common Stock is then listed.

17. Amendment or Substitution of Awards under this Plan .

The terms of any outstanding Award under this Plan may be amended from time to time by the Committee in its discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the date of exercise of any Award or of the date of lapse of restrictions on Shares); provided that, (a) except as otherwise

provided in **Section 15**, no such amendment shall adversely affect in a material manner any right of a participant under the Award without his or her written consent, (b) that the Committee shall not reduce the exercise price of any options or SARs awarded under this Plan or make any amendment that would be deemed to be a repricing under the rules of the New York Stock Exchange without approval of the stockholders of the Company, and (c) except as otherwise provided in **Section 15** or as set forth in the applicable stock option agreements (e.g., with respect to cancellation of options upon termination of employment), there shall be no adjustment to the grantees, number of shares, or exercise prices with regard to any option grant after the Grant Date.

18. Commencement Date; Termination Date.

The date of commencement of this Plan shall be June 2, 2004, subject to approval by the stockholders of the Company. Unless previously terminated upon the adoption of a resolution of the Board terminating this Plan, this Plan shall terminate at the close of business on June 1, 2014. No termination of this Plan shall materially and adversely affect any of the rights or obligations of any person, without his or her written consent, under any grant of options or other incentives theretofore granted under this Plan.

19. Severability.

Whenever possible, each provision of this Plan shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Plan is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Plan.

20. Governing Law.

The Plan shall be governed by the corporate laws of the State of Delaware, without giving effect to any choice of law provisions that might otherwise refer construction or interpretation of this Plan to the substantive law of another jurisdiction.