



ITEX CORPORATION

2022 PROXY STATEMENT

Notice of Annual Meeting of Stockholders

NOTICE OF 2022 ANNUAL MEETING OF STOCKHOLDERS

Thursday, January 6, 2022

10:00 a.m.

ITEX Corporation, 15900 SE Eastgate Way, Suite 100, Bellevue, Washington 98008

The annual meeting of stockholders of ITEX Corporation (“ITEX” or the “Company”) will be held at 10:00 a.m. local time on Thursday, January 6, 2022, at the ITEX corporate offices located at 15900 SE Eastgate Way, Suite 100, Bellevue, Washington 98008, for the following purposes:

1. To elect the three directors named in the proxy statement;
 2. To approve the 2022 Equity Incentive Plan
 3. To ratify the selection of Plante & Moran, PLLC as our independent auditors for fiscal year 2022;
 4. To act on any other business that may properly come before the meeting and any adjournment thereof.
- Only stockholders of record at the close of business on November 12, 2021, the record date, are entitled to notice of, and to vote at, the annual meeting. For instructions on voting, please refer to the notice you received in the mail or, if you requested a hard copy of the proxy materials, on your enclosed proxy card.

By Order of the Board of Directors

Steven White
Chairman of the Board
Bellevue, Washington
November 23, 2021

Important notice regarding the availability of proxy materials for the stockholder meeting to be held on January 6, 2022. The notice of internet availability of proxy materials, notice of meeting, and proxy statement are available at:

www.itex.com/ir/annualmeeting

VOTING INSTRUCTIONS

Vote Right Away

Your vote matters to the future of ITEX. Whether or not you plan to attend the meeting, please read this proxy statement and vote right away using one of the methods described below.

Agenda items which require your vote		More Information	Board recommendation
ITEM 1	Elect the three directors named in the proxy statement.	Page 6	FOR each director
ITEM 2	Approve the 2022 Equity Incentive Plan	Page 6	FOR
ITEM 3	Ratify the selection of PLANTE & MORAN, PLLC as our independent auditing firm for fiscal year 2022.	Page 8	FOR

Voting Methods

In all cases, have your proxy card or voting instruction form in hand and follow the instructions.



*By Internet using
your computer*

Go to www.proxyvote.com
Visit 24/7



By telephone

Call toll-free 24/7 at **1-800-690-6903**



*By mailing your
proxy card*

If you received a printed copy of these proxy materials by mail, you may vote by signing and mailing the enclosed proxy card or voter instruction form

Can my shares be voted even if I abstain or don't vote by proxy or attend the Annual Meeting?

If you cast a vote of "abstention" on a proposal, your shares cannot be voted otherwise unless you later change your vote. Although they are considered to be present and entitled to vote at the annual meeting, abstentions will have no effect, since only votes "for" or "against" a proposal will be considered in determining the outcome. Abstentions are included in the determination of shares present for quorum purposes.

Your custodian is required to vote your shares on your behalf in accordance with your instructions. If you don't vote your shares held in street name, whether your shares can be voted by such person depends on the type of item being considered for a vote. The election of directors and the approval of the equity incentive plan are non-discretionary items and may not be voted on by brokers, banks or other nominees who have not received specific voting instructions from beneficial owners. The ratification of the appointment of Plante & Moran, PLLC as our independent auditing firm is a discretionary item. Generally, banks, brokers and other nominees that do not receive voting instructions from beneficial owners may vote on this proposal in their discretion. Accordingly, brokers will not be able to vote your shares for agenda Items 1 and 2 if you fail to provide voting instructions. If you do not provide instructions, a "broker non-vote" results, and the underlying shares will not be considered votes cast at the annual meeting. Broker non-votes will be counted for purposes of determining whether a quorum is present, but will not be counted in determining the number of shares necessary for approval.

If you submit your signed proxy card or voter instruction form, but none of the boxes are checked to indicate how your shares are to be voted, then your shares will be voted in accordance with the Board's recommendations set forth in this proxy statement (see page 6 and page 7).

What constitutes a quorum for the annual meeting?

The presence of the owners of 51 percent of the shares entitled to vote is required in order to conduct business at the annual meeting. Presence may be in person or by proxy. You will be considered part of the quorum if you voted on the Internet, by telephone or by submitting a proxy card or voting instruction form by mail, or if you are present at the annual meeting. Abstentions and proxies submitted by brokers (even with limited voting power such as for discretionary matters only) will be considered "present" at the annual meeting and counted in determining whether there is a quorum present.

Can I change my vote after I have delivered my proxy?

You can change your vote by revoking your proxy at any time before it is exercised at the meeting in one of four ways:

- Vote again on the Internet or by telephone (only your latest proxy submitted prior to the meeting will be counted);
- Submit a proxy card with a later date;
- Notify the Corporate Secretary in writing before the annual meeting that you are revoking your proxy; or
- Vote in person at the annual meeting.

Attendance at the annual meeting will not automatically revoke your previously granted proxy unless you vote again at the meeting or specifically request in writing that your prior proxy be revoked. If you hold shares in street name, you may submit new voting instructions by contacting your broker, bank or other intermediary. You may also change your vote or revoke your proxy in person at the annual meeting if you obtain a legal proxy from the record holder (broker, bank or other intermediary) giving you the right to vote the shares.

Where can I find voting results of the annual meeting?

We will post the voting results at www.otcm Markets.com within four business days of certification by the inspector.

How can I submit a proposal for the next annual meeting?

Our bylaws provide that for an eligible stockholder proposal to be considered for inclusion in ITEX's proxy statement for the next annual meeting, the written proposal must be delivered to the Corporate Secretary of ITEX at our principal executive offices not less than 90 nor more than 150 days before the anniversary of this year's proxy mailing date, unless the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days

after the anniversary of this year's annual meeting. In that case, we must receive proposals not later than the close of business on the later of (i) the 90th day prior to such annual meeting or (ii) the 15th day following the day on which we first make a public announcement of the date of the meeting. To be in proper form, a stockholder's notice must include the specified information concerning the proposal as described in our bylaws. A copy of the bylaws is available on our corporate web site at www.itex.com on the "Investor Relations" page under the link "Governance — Corporate Bylaws."

How can I attend the annual meeting?

You are invited to attend the annual meeting only if you were a registered or beneficial owner of ITEX stock (or joint holder) as of the close of business on the record date or if you hold a valid proxy for the annual meeting. If you are a stockholder of record (owning shares in your own name), your name will be verified against the list of registered stockholders on the record date prior to your being admitted to the annual meeting.

If you are not a stockholder of record but hold shares through a broker or nominee (in street name), you should provide proof of beneficial ownership on the record date, such as a recent account statement or a copy of the voting instruction card provided by your broker or nominee.

On the day of the meeting, each stockholder will be required to present a valid picture identification such as a driver's license.

Note: In view of the COVID-19 pandemic and as part of our priority to protect the health and safety of the public and our team members, we will be following local public health guidelines. Masks are required in public indoor spaces. In addition, we require advance notice of physical attendance to ensure we do not exceed any applicable gathering restrictions. Since seating will be limited, we ask stockholders to call 425-463-4000 or send an email to the Company at rob.benson@itex.com to make a reservation for the meeting. When making your reservation, please give your full name, company name and address. If you do not make a reservation, you may not be provided entry into the meeting due to limited space.

DIRECTOR NOMINEES

Three individuals will be nominated for election as directors at the Annual Meeting. Directors elected at the annual meeting will hold office until the next annual meeting or until their successors have been elected and qualified. Each of the three nominees for director is currently a director of the Company.



Eric Best

Age: 50

Director since: 2003

Eric Best has served as Chief Executive Officer at Sound Commerce since April 2018. Mr. Best served as Chief Strategy Officer of CommerceHub from January 2015 to August 2016. Mr. Best founded and served as Chief Executive Officer of Mercent Corporation from 2005 to January 2015. Mercent Corporation, a SaaS company that enables retailers to sell through online merchandising channels, was acquired by CommerceHub in January 2015.

Mr. Best has more than 25 years of executive operating experience in SaaS and consumer marketing technology. Mr. Best is an established technology executive, founding six successful product and service companies throughout his career. With entrepreneurial, executive, finance and board-level experience in the technology sector, Mr. Best brings to the Board substantial knowledge and meaningful insight into the branding, commercialization, software development, financial and capital-related issues companies face.



John Wade

Age: 59

Director since: 2003

Mr. Wade has served as Chief Financial Officer since January 2013. He has served as Secretary and Treasurer of ITEX since 2003. Mr. Wade is currently a principal of Wade Consulting. From 1998 to 2007, Mr. Wade served as Chief Financial Officer of Aptimus, Inc., a public online direct marketing company, responsible for leadership of financial operations, including strategic and financing transactions.

Mr. Wade is a Certified Public Accountant, and has more than 30 years of financial and accounting expertise, including strategic and financing transactions, and developing disclosure and internal controls for public corporations. This experience allows Mr. Wade to bring to the Board substantial financial and accounting knowledge, process controls, and a valuable perspective in making strategic decisions and planning for our future. Mr. Wade has demonstrated skills in areas that are relevant to the oversight of our business, including strategic initiatives, risk management, finance, financial reporting and treasury functions.



Steven White

Age: 63

Director since: 2003

Mr. White is the Chairman of the Board and President; positions he has held since 2003. He served as CEO of ITEX from 2003 to May 2021. Prior to joining the Company, from 1996 to 2000 Mr. White was the President and Chief Executive Officer of Ubarter.com, a web-based trading community originally founded by Mr. White in 1983 as Cascade Trade Association.

Mr. White has more than 30 years of entrepreneurial and executive and board-level experience in the barter industry, including principal executive officer positions. This extensive experience allows Mr. White to bring to the Board a deep insight into the operations, relationships, competitive and financial positioning, and strategic opportunities and challenges facing ITEX and the barter industry. As Chief Executive Officer of ITEX, Mr. White developed and led a strategy designed to achieve sustainable, profitable operations, resulting in profitable operations every full year while in office.

ITEM 1 Election of Directors

The Nominating Committee believes that the director nominees possess qualifications, skills and experience that are consistent with the standards for the selection of nominees for election to the Board and that they have demonstrated the ability to effectively oversee ITEX's corporate, financial and business operations. Biographical information for the Company's directors is set forth above, including the principal occupation and other public company directorships (if any) held by each director in the past five years and a description of the specific experience and expertise that qualifies each director to serve as a director of ITEX.

The Board of Directors recommends that Stockholders vote "FOR" all nominees for election as Directors.

ITEM 2 Approval of 2022 Equity Incentive Plan

We are asking stockholders to approve the ITEX Corporation 2022 Equity Incentive Plan (the "2022 Plan"), which will replace the 2014 Equity Incentive Plan (the "2014 Plan"). No shares remain available for issuance under the 2014 Plan. The Board approved the 2022 Plan, subject to stockholder approval at the annual meeting. The 2022 Plan is an important part of our compensation program.

If stockholders do not approve Item 3, the 2022 Plan will not become effective, and the 2014 Plan will expire on December 13, 2023. If stockholders approve the 2022 Plan, it will be effective as of the date of the 2022 annual meeting.

The Board of Directors recommends that Stockholders vote "FOR" approval of the 2022 Equity Incentive Plan.

Highlights of the Plan

- ✓ **No stock options.** There is no provision in the 2022 Plan for issuance of stock options.
- ✓ **No evergreen provision.** There is no evergreen feature under which the shares authorized for issuance under the 2022 Plan can be automatically replenished.
- ✓ **Amendments that require stockholder approval.** A change that would increase the number of shares authorized for issuance requires stockholder approval, as do other amendments which are required by applicable law.
- ✓ **Prohibition of Certain Share Recycling, or "Liberal Share Counting," Practices.** The 2022 Plan does not allow shares to be added back to the maximum share limitation under the 2022 Plan if they were withheld or reacquired for tax payments relating to stock awards; or repurchased by the Company.
- ✓ **Ten-Year Plan Term.** The 2022 Plan prohibits the making of awards after January 6, 2032.
- ✓ **Clawback.** Clawback of awards for accounting restatements from participants and officers (under Section 304 of SOX).
- ✓ **Administered by committee.** The 2022 Plan is administered by our Compensation Committee.

Background

We currently have in place the 2014 Equity Incentive Plan (the "2014 Plan") originally approved by our stockholders at the 2013 annual meeting of stockholders. The 2014 Plan provides that the maximum number of shares of ITEX common stock that may be issued pursuant to awards granted under the Plan is 400,000 shares. The 2014 Plan will expire on December 13, 2023. No shares remain available for issuance under the 2014 Plan as of the date of this proxy statement. In view of the full utilization and upcoming expiration of the 2014 Plan, the Board of Directors, upon the recommendation of the Compensation Committee, approved and recommended that the stockholders approve the 2022 Plan.

If approved by our stockholders, 300,000 shares would be authorized for issuance under the 2022 Plan. Awards under the 2022 Plan may be granted only to employees, consultants and directors.

The Board of Directors recommends that our stockholders approve the Plan. Absent approval of the Plan, we do not have shares to meet our anticipated equity compensation needs for fiscal 2023. ITEX relies on equity awards to retain and compensate key employees and from time to time, non-employee Board members, as well as for conservation of cash, and believes that equity incentives are necessary for ITEX to remain competitive with regard to

retaining and attracting qualified individuals. We believe that approval of the Plan is necessary in order to allow ITEX to continue to utilize equity awards to retain and attract the services of key individuals essential to our long-term financial success and to further align their interests with those of our stockholders. The Plan would further these objectives by allowing ITEX to grant awards under the Plan for another ten years.

If our stockholders do not approve the Stock Plan, we may need to instead offer material cash-based incentives to retain and compensate key employees and non-employee Board members, which could have a significant effect upon our cash flow and balance sheet.

Factors Considered

The following factors were taken into account by the Compensation Committee and the Board of Directors in approving the Plan:

- No shares are available under the 2014 Plan.
- Historical equity award granting practices, including our three-year and ten-year average share usage rate (commonly referred to as burn rate).
- Impact of total outstanding equity awards under the 2014 Plan.
- Expected value transfer and dilution resulting from the proposed increase in authorized shares.
- Offset of dilution from stock-based compensation due to our practice of repurchasing shares. We have repurchased 1,471,851 shares of common stock since fiscal 2014 (including self-tender offerings), during which an aggregate total of 400,000 shares were issued under the 2014 Plan.

Shares Currently Available under the Plan. As of July 31, 2021, we had 1,696,691 shares of common stock issued and outstanding (including unvested restricted stock) and 25,000 shares of common stock were available for future awards under the 2014 Plan. As of July 31, 2021, the proposed 300,000 additional shares, if issued, would represent approximately 17.7% of the then-issued and outstanding shares of common stock. The proposed additional shares are expected to be sufficient, based on historical granting practices, to cover awards for the next several years. However, the actual grants are within the discretion of the Committee and conditions in future years may warrant grants that are greater or lesser than those in previous years.

Historical Equity Award Granting Practices. In setting and recommending to stockholders the increase in the number of shares authorized under the Plan, the Committee and the Board also considered the historical number of equity awards granted under the Plan in the past several years. During the seven-year period from fiscal 2014 to 2021, we granted awards covering 375,000 shares under the 2014 Plan.

Share Repurchase Program. We have an active share repurchase program. For example, during the period from fiscal 2014 through 2021, we repurchased 1,417,851 shares of common stock, in open market purchases, privately negotiated transactions and by means of partial tender offers. This more than offset the dilution caused by the issuance of 375,000 shares of stock-based compensation during that period. We anticipate that the Board will continue to authorize additional repurchases that will help offset, or completely offset, potential dilution of our common stock from the Plan.

Summary of 2022 Equity Incentive Plan

The following is a summary of the material features of the Plan. This summary is qualified in its entirety by reference to Appendix A, which contains the complete text of the Plan.

Administration

The Plan provides that the Compensation Committee or another committee appointed by the Board will administer the Plan. Because the Compensation Committee is currently performing administration duties, throughout the following discussion we refer to the administrator as the Committee. The Committee has full and final authority under the Plan to determine eligibility and types and terms of awards and to interpret and administer the Plan. Any decision or action of the Committee in connection with the Plan is final and binding.

Eligibility

Awards may be made to any of our employees, consultants and directors, or employees of any subsidiary. In determining which employees will receive awards, the Committee will consider such factors as it deems relevant in order to promote the purposes of the Plan.

Types of Awards

Awards may be in the form of restricted and unrestricted shares of our common stock and restricted stock units, and other awards including the payment of cash in settlement of restricted stock unit awards or for bonuses. Subject to the limits in the Plan, the Committee has discretion to determine the number of shares or units to be awarded and the terms and conditions of the awards. The right to vest or receive distributions or payments with respect to restricted stock and restricted stock unit awards may be conditioned upon attainment of performance goals or continued service.

Each award is evidenced by an agreement that specifies the number of shares or units being awarded, any restrictions or vesting conditions, any applicable performance goals, and other terms the Committee may deem appropriate such as provisions relating to a change of control and a participant's termination of employment. With respect to any restricted stock or restricted stock unit awards with performance-based vesting, any dividends or dividend equivalent rights based on the performance-based vesting of such awards are only paid to the participant upon satisfaction of the performance-based vesting conditions.

Restricted Stock Awards. The Committee may impose restrictions or conditions to the vesting of such shares, as it determines, such as performance criteria or a specified period of active service. Upon the grant of restricted shares, the participant has the rights and privileges of a stockholder as to the restricted stock, including the right to vote the shares and to receive regular cash dividends and other distributions paid with respect to the shares. Restricted stock is subject to restrictions on transferability and, except as determined by the Committee at the time of the grant, all shares that have not vested are subject to forfeiture without further obligation on the part of the Company upon termination of participant's service.

Restricted Stock Units. Restricted stock units represent the right to receive shares of common stock (or an equivalent value in cash or any combination of cash and common stock, as specified in the award agreement) at a designated time in the future, which right is subject to restrictions on transferability and subject to forfeiture on terms set by the Committee. Participants have no voting rights with respect to shares of stock represented by restricted stock units until the date of the issuance of such shares. The Committee may authorize dividend equivalent rights on awards of restricted stock units, payable on the settlement date.

Other Awards. The Committee may grant other awards which may include stock bonuses or unrestricted stock awards in such amounts as it shall determine from time to time, which may or may not be subject to such conditions or performance criteria as the Committee shall determine at the time of the grant. The Committee may, in connection with any grant of any award or at any time thereafter, grant a cash bonus, payable promptly after the date on which the participant is required to recognize income for federal income tax purposes in connection with such grant, in such amounts as the Committee shall determine from time to time.

Deferral

The Committee may, in its sole discretion, permit a participant to defer the receipt of the payment of cash or the delivery of stock that would otherwise be due to such participant under the Plan. If any such deferral election is permitted, the Committee will establish rules and procedures for the deferrals.

Elective Share Withholding

An employee may elect to have shares withheld with a fair market value in an amount required to satisfy the minimum federal, state, and local tax withholding requirements upon the vesting of a restricted stock or restricted stock unit award, or any other taxable event in respect to an award granted under the Plan.

Limits on Transferability

In general, awards are not assignable or transferable other than by will or the laws of descent and distribution.

Forfeitability

Unless otherwise provided by the Committee or in an award agreement, if a participant has a termination of employment, all awards will terminate and be forfeited on the date of such termination of employment. Typically,

subject to exceptions for death, disability, and retirement, all unvested awards will terminate and be forfeited on the date of an employee's termination of employment or failure to achieve specific performance goals.

Clawback

In the event of a restatement of our financial results to correct a material error or inaccuracy resulting in whole or in part from the fraud or intentional misconduct of an officer who is subject to Section 16 of the Securities Exchange Act of 1934, to the extent permitted by applicable law, we may take such actions as we determine to be appropriate to recover compensation provided to such officer under the Plan, including without limitation cancellation of outstanding awards or recovery of all or a portion of any gain realized upon vesting, settlement, or exercise of an award or recovery of all or a portion of any proceeds resulting from any disposition of shares received pursuant to an award.

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

Adjustments for Certain Events

The Committee will make proportional adjustments to the maximum number of shares of common stock that may be delivered under the Plan and to outstanding awards to reflect stock dividends, stock splits, spin-offs, rights offerings, recapitalizations, mergers, consolidations, reorganizations, liquidations, or similar events. The Committee may provide in awards for accelerated vesting and other rights in the event of a change of control.

Amendment, Modification, and Termination of the Plan

The Board may amend, alter, suspend, or terminate the Plan at any time and in any respect, provided that no amendment will (1) increase the total number of shares of common stock that can be issued under the Plan, (2) require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or market system upon which the Stock may then be listed, unless in each instance the amendment is approved by our stockholders. No amendment, modification, or termination of the Plan may materially affect in an adverse way any award then outstanding under the Plan, without an employee's written consent, unless otherwise provided in the Plan or required by applicable law.

Duration of the Plan

The Plan will remain in effect until its termination by the Committee, *provided, however*, that, all awards shall be granted, if at all, within ten (10) years from the date the Plan is approved by stockholders.

The entire text of the 2022 Plan is set forth in [Annex A](#).

The Board of Directors recommends that Stockholders vote “FOR” approval of the 2022 Equity Incentive Plan.

ITEM 3 Ratification of the Appointment of Independent Auditors

In accordance with its charter, the Audit Committee has appointed Plante & Moran, PLLC (“Plante Moran”) as the independent auditors of the Company for the fiscal year ending July 31, 2022. Prior to this appointment, the Audit Committee considered the prior performance and quality controls of Plante Moran and concluded it was capable of providing high quality, independent auditing services to the Company. Plante Moran has been our independent audit firm since 1998. Among other matters, the Audit Committee concluded that current requirements for audit partner

rotation, auditor independence through limitation of services and other regulations affecting the audit engagement process have substantially assisted in maintaining auditor independence despite the long-term nature of Plante Moran's service to us. We obtain tax services from another service provider. A representative of Plante Moran is not expected to be present at the meeting.

The Board of directors recommends that Shareholders vote "FOR" the ratification of the appointment of Plante & Moran, PLLC as the independent auditors of the Company for the fiscal year ending July 31, 2022.

OTHER INFORMATION

The Board of Directors does not presently intend to bring any other business before the meeting, and, as of the date of this proxy statement, we are not aware of any matters to be presented other than those described in this proxy statement. However, if any business matters other than those referred to in this proxy statement should properly come before the meeting, the persons named in the proxy will, to the extent permitted by applicable law, use their discretion to determine how to vote your shares in accordance with their judgment.

The cost of soliciting proxies on behalf of the Board of Directors will be borne by ITEX. These costs will include the expense of preparing, assembling, printing and mailing the notice, this proxy statement and any other material used in the Board's solicitation of proxies to stockholders of record and beneficial owners, and reimbursements paid to brokerage firms and others for their reasonable out-of-pocket expenses for forwarding proxy materials to stockholders and obtaining beneficial owners' voting instructions.

Our audited annual financial statements and unaudited quarterly financial statements are posted with the OTC Disclosure and News Service and are available at www.otcmarkets.com, or through the investor relations portion of our website at www.itex.com. This proxy statement and other materials are available to you on the Internet. Stockholders who access the Company's materials this way get the information they need electronically, which allows us to reduce printing and delivery costs. The Notice contains instructions as to how to access and review these materials. You may also refer to the Notice for instructions regarding how to request paper copies of these materials.

By Order of the Board of Directors



John Wade
CFO and Corporate Secretary
Bellevue, Washington

ITEX CORPORATION
2022 EQUITY INCENTIVE PLAN

1. **Purpose, Effective Date and Term of Plan**

1.1 **Purpose.** The purpose of the Plan is to advance the interests of ITEX Corporation (the “Company”) and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company.

1.1 **Effective Date.** The ITEX Corporation 2022 Equity Incentive Plan (the “Plan”) is hereby established effective as of January 6, 2022, subject to approval of the stockholders of the Company.

1.3 **Term of Plan.** The Plan shall continue in effect until its termination by the Committee; provided, however, that, to the extent required by applicable law, all Awards shall be granted, if at all, within ten (10) years from the date the Plan is approved by stockholders.

1.4 **Definitions.** Capitalized terms used in this Plan not defined in the text shall have their respective meanings set forth in Section 14.

2. **Administration**

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

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

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

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

- (a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock to be subject to each Award;
- (b) to determine the type of Award granted;
- (c) to determine the Fair Market Value of shares of Stock or other property;
- (d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding

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

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- (a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock to be subject to each Award;
- (b) to determine the type of Award granted;
- (c) to determine the Fair Market Value of shares of Stock or other property;
- (d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding

obligation arising in connection with Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the time of the expiration of any Award, (vi) the effect of the Participant's termination of Service on any of the foregoing, and (vii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;

- (e) to determine whether an Award will be settled in shares of Stock, cash, or in any combination thereof;
- (f) to approve one or more forms of Award Agreement;
- (g) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired upon the exercise thereof;
- (h) to accelerate, continue, extend or defer the exercisability of any Award or the vesting of any shares acquired upon the exercise thereof, including with respect to the period following a Participant's termination of Service;
- (i) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws or regulations of or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose citizens may be granted Awards; and
- (j) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law.

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

3. **Shares Subject to Plan**

3.1 **Maximum Number of Shares Issuable.** Subject to adjustment as provided in Sections 3.2 and 3.3, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be three hundred thousand (300,000) which shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.

3.2 **Share Counting.** If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture are forfeited, the shares of Stock allocable to the terminated portion of such Award or such forfeited shares of Stock shall again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in

cash. Shares withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to Section 10.2, or repurchased by the Company, shall not again be available for issuance under the Plan.

3.3 Adjustments for Changes in Capital Structure. Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and class of shares subject to the Plan and to any outstanding Awards, and in the exercise or purchase price per share of any outstanding Awards in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to an Ownership Change Event) shares of another corporation (the "**New Shares**"), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to, and the exercise or purchase price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee, in its discretion. Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number, and the exercise price per share shall be rounded up to the nearest whole cent. In no event may the exercise price of any Award be decreased to an amount less than the par value, if any, of the stock subject to the Award. The Committee in its sole discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

4. Eligibility

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

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

5. Restricted Stock Awards

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

5.1 Types of Restricted Stock Awards Authorized. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more performance goals.

5.2 Purchase Price. No monetary payment (other than applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Restricted Stock Award, the consideration for which shall be services actually rendered to the Company or for its benefit.

5.3 Vesting and Restrictions on Transfer. Shares issued pursuant to any Restricted Stock Award may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event or as provided in Section 5.6. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to such Restricted Stock Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Insider Trading Policy, then satisfaction of the Vesting Conditions automatically shall be determined on the next trading day on which the sale of such shares would not violate the Insider Trading Policy. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

5.4 Voting Rights; Dividends and Distributions. Except as provided in this Section, Section 5.5 and any Award Agreement, during any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares. However, in the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 3.3, any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

5.5 Effect of Termination of Service. Unless otherwise provided by the Committee in the Award Agreement evidencing a Restricted Stock Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

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

6. Restricted Stock Unit Awards.

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

6.1 Grant of Restricted Stock Unit Awards. Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more performance goals.

6.2 **Purchase Price.** No monetary payment (other than applicable tax withholding, if any) shall be required as a condition of receiving a Restricted Stock Unit Award, the consideration for which shall be services actually rendered to the Company or for its benefit.

6.3 **Vesting.** Restricted Stock Unit Awards may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Unit Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to the Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Insider Trading Policy, then satisfaction of the Vesting Conditions automatically shall be determined on the first to occur of (a) the next trading day on which the sale of such shares would not violate the Insider Trading Policy or (b) the later of (i) the last day of the calendar year in which the original vesting date occurred or (ii) the last day of the Company's taxable year in which the original vesting date occurred.

6.4 **Voting Rights, Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Such Dividend Equivalent Rights, if any, shall be paid by crediting the Participant with additional whole Restricted Stock Units as of the date of payment of such cash dividends on Stock. The number of additional Restricted Stock Units (rounded to the nearest whole number) to be so credited shall be determined by dividing (a) the amount of cash dividends paid on such date with respect to the number of shares of Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Such additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 3.3, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

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

6.6 **Settlement of Restricted Stock Unit Awards.** The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee, in its discretion, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 6.4) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes, if any. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section, and such deferred issuance date(s) and amount(s) elected by the Participant shall be set forth in the Award

Agreement. Notwithstanding the foregoing, the Committee, in its discretion, may provide in any Award Agreement for settlement of any Restricted Stock Unit Award by payment to the Participant in cash of an amount equal to the Fair Market Value on the payment date of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

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

7. **Unrestricted Stock Awards; Stock and Cash Bonuses**

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

7.1 The Committee may grant issue to a Participant Unrestricted Stock Awards or Stock Bonuses in such amounts as it shall determine from time to time. An Unrestricted Stock Award shall be granted or Stock Bonus paid at such time (including a future date selected by the Committee at the time of grant) and subject to such conditions as the Committee shall determine at the time of the grant of such Unrestricted Stock Award or Stock Bonus. By way of example and not by way of limitation, the Committee may require, as a condition to the grant of an Unrestricted Stock Award or payment of a Stock Bonus, that the Participant or the Company achieve such performance criteria as the Committee may specify at the time of the grant. Certificates for shares of Company Stock granted as an Unrestricted Stock Award or a Stock Bonus shall be issued in the name of the Participant to whom such grant was made and delivered to such Participant as soon as practicable after the date on which such Unrestricted Stock Award is granted or Stock Bonus is required to be paid. Prior to the date on which an Unrestricted Stock Award is granted or a Stock Bonus awarded hereunder is required to be paid, such Award shall constitute an unfunded, unsecured promise by the Company to distribute Company Stock in the future.

7.2 The Committee may, in its absolute discretion, in connection with any grant of Unrestricted Stock, Restricted Stock or a Stock Bonus or at any time thereafter, grant a cash bonus, payable promptly after the date on which the Participant is required to recognize income for federal income tax purposes in connection with such grant of Unrestricted Stock, Restricted Stock or Stock Bonus, in such amounts as the Committee shall determine from time to time; provided, however, that in no event shall the amount of a Cash Bonus exceed the Fair Market Value of the related shares of Unrestricted Stock, Restricted Stock or Stock Bonus on such date. A cash bonus shall be subject to such conditions as the Committee shall determine at the time of the grant of such cash bonus.

8. **Standard Forms of Award Agreements**

8.1 **Award Agreements.** Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from time to time. No Award or purported Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Any Award Agreement may consist of an appropriate form of Notice of Grant and a form of Agreement incorporated therein by reference, or such other form or forms, including electronic media, as the Committee may approve from time to time.

8.2 **Authority to Vary Terms.** The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment

of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

9. **Change in Control**

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

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

(b) ***Assumption, Continuation or Substitution.*** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "***Acquiror***"), may, without the consent of any Participant, either assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee, in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled; provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. If any portion of such consideration may be received by holders of Stock pursuant to the Change in Control on a contingent or delayed basis, the Committee may, in its sole discretion, determine such Fair Market Value per share as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(c) ***Cash-Out of Awards.*** The Committee may, in its discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Committee) of Stock subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control, reduced by the exercise or purchase price per share, if any, under such Award. If any portion of such consideration may be received by holders of Stock pursuant to the Change in Control on a contingent or delayed basis, the Committee may, in its sole discretion, determine such Fair Market Value per share as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. In the event such determination is made by the Committee, the amount of such payment (reduced by applicable withholding taxes, if any) shall be paid to Participants in respect of the vested

portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards.

9.2 **Federal Excise Tax under Section 4999 of the Code.**

(a) ***Excess Parachute Payment.*** In the event that any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an “excess parachute payment” under Section 280G of the Code, the Participant may elect, in his or her sole discretion, to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization.

(b) ***Determination by Independent Accountants.*** To aid the Participant in making any election called for under Section 10.2(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an “excess parachute payment” to the Participant as described in Section 10.2(a), the Company shall request a determination in writing by independent public accountants selected by the Company (the “***Accountants***”). As soon as practicable thereafter, the Accountants shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determination. The Company shall bear all fees and expenses the Accountants may reasonably charge in connection with their services contemplated by this Section 10.2(b).

10. **Tax Withholding**

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

10.2 **Withholding in Shares.** The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of the Company. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates.

11. **Compliance with Securities Law**

The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any

regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares hereunder shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

12. Amendment or Termination of Plan

The Committee may amend, suspend or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be no amendment of the Plan that would increase the number of shares authorized for issuance, or require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or market system upon which the Stock may then be listed. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Award without the consent of the Participant. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, the Committee may, in its sole and absolute discretion and without the consent of any Participant, amend the Plan or any Award Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Award Agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A of the Code and all applicable guidance promulgated thereunder.

13. Miscellaneous Provisions

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

13.2 **Forfeiture Events.**

(a) The Committee may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, termination of Service for Cause or any act by a Participant, whether before or after termination of Service, that would constitute Cause for termination of Service.

(b) In the event of a restatement of our financial results to correct a material error or inaccuracy resulting in whole or in part from the fraud or intentional misconduct of an officer who is subject to Section 16 of the Securities Exchange Act of 1934, to the extent permitted by applicable law, we may take such actions as we determine to be appropriate to recover compensation provided to such officer under the Plan, including without limitation cancellation of outstanding awards or recovery of all or a portion of any gain realized upon vesting, settlement, or exercise of an award or recovery of all or a portion of any proceeds resulting from any disposition of shares received pursuant to an award.

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

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

13.4 **Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 4, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of the Company to terminate the Participant's Service at any time.

13.5 **Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 3.3 or another provision of the Plan.

13.6 **Delivery of Title to Shares.** Subject to any governing rules or regulations, the Company shall issue or cause to be issued the shares of Stock acquired pursuant to an Award and shall deliver such shares to or for the benefit of the Participant by means of one or more of the following: (a) by delivering to the Participant evidence of book entry shares of Stock credited to the account of the Participant, (b) by depositing such shares of Stock for the benefit of the Participant with any broker with which the Participant has an account relationship, or (c) by delivering such shares of Stock to the Participant in certificate form.

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

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

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

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

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

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

14. **Definitions and Construction.**

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

(a) "**Affiliate**" means (i) an entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) an entity, other than a Subsidiary Corporation, that is controlled by the Company directly or indirectly through one or more intermediary entities. For this purpose, the term "control" (including the term "controlled by") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the relevant entity, whether through the ownership of voting securities, by contract or otherwise; or shall have such other meaning assigned such term for the purposes of registration on Form S-8 under the Securities Act.

(b) "**Award**" means any Restricted Stock Award, Restricted Stock Unit Award or award of Unrestricted Stock or a Stock Bonus granted under the Plan.

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

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

(e) "**Cause**" means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant's Award Agreement or by a written contract of employment or service, any of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of the Company documents or records; (ii) the Participant's material failure to abide by the Company's code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Participant's improper use or disclosure of the Company's confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on the Company's reputation or business; (v) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company of, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and the Company, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with the Company.

(f) “**Change in Control**” means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant’s Award Agreement or written contract of employment or service, the occurrence of any of the following:

(i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total combined voting power of the Company’s then-outstanding securities entitled to vote generally in the election of Directors; provided, however, that the following acquisitions shall not constitute a Change in Control: (1) an acquisition by any such person who on the Effective Date is the beneficial owner of more than fifty percent (50%) of such voting power, (2) any acquisition directly from the Company, including, without limitation, a public offering of securities, (3) any acquisition by the Company, (4) any acquisition by a trustee or other fiduciary under an employee benefit plan of the Company or (5) any acquisition by an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the voting securities of the Company; or

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

(iii) the liquidation or dissolution of the Company. provided, however, that a Change in Control shall be deemed not to include a transaction described in subsections (i) or (ii) of this Section 14.1(f) in which a majority of the members of the board of directors of the continuing, surviving or successor entity, or parent thereof, immediately after such transaction is comprised of Incumbent Directors. Notwithstanding the foregoing, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan by reason of a Change in Control, such amount shall become payable only if the event constituting a Change in Control would also constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company within the meaning of Section 409A.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall have the right to determine whether multiple sales or exchanges of the voting securities of the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive.

(g) “**Code**” means the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.

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

(i) “**Company**” means ITEX Corporation, a Nevada corporation, or any successor corporation thereto.

(j) “**Consultant**” means a person engaged to provide consulting or advisory services (other than as an Employee or a Director) to the Company.

(k) “**Director**” means a member of the Board.

(l) “**Disability**” means the inability of the Participant, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of the Participant’s position with the Company because of the sickness or injury of the Participant.

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

(n) “**Employee**” means any person treated as an employee (including an Officer or a Director who is also treated as an employee) in the records of the Company or any subsidiary corporation (whether now existing or subsequently established). The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual’s employment or termination of employment, as the case may be. For purposes of an individual’s rights, if any, under the terms of the Plan as of the time of the Company’s determination of whether or not the individual is an Employee, all such determinations by the Company shall be final, binding and conclusive as to such rights, if any, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination as to such individual’s status as an Employee.

(o) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

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

(i) If, on such date, the Stock is listed on a national or regional securities exchange or market system, or is quoted on the OTC Markets Group Inc., whether OTCQB or OTCQX (“OTC”), the Fair Market Value of a share of Stock shall be the closing price of a share of Stock (or the mean of the closing bid and asked prices of a share of Stock if the Stock is so quoted instead) as quoted on such national, regional securities exchange, market system or OTC constituting the primary market for the Stock, as reported in The Wall Street Journal, the OTC or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded over the counter or on such securities exchange or market system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

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

(q) “**Incumbent Director**” means a director who either (i) is a member of the Board as of the Effective Date or (ii) is elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination, but who was not elected or nominated in connection with an actual or threatened proxy contest relating to the election of directors of the Company.

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

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

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

(u) “**Ownership Change Event**” means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a

merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

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

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

(x) “**Restricted Stock Award**” means an Award granted to a Participant pursuant to Section 5 to receive a share of Stock on a date determined in accordance with the provisions of such Section and the Participant’s Award Agreement.

(y) “**Restricted Stock Unit**” means a right granted to a Participant pursuant to Section 6 to receive a share of Stock on a date determined in accordance with the provisions of such Section and the Participant’s Award Agreement.

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

(aa) “**Section 409A**” means Section 409A of the Code.

(bb) “**Securities Act**” means the Securities Act of 1933, as amended.

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

(dd) “**Stock**” means the common stock of the Company, as adjusted from time to time in accordance with Section 3.3.

(ee) “**Stock Bonus**” means an award of Stock, or cash in lieu of Stock, pursuant to Section 7.

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

(gg) “**Unrestricted Stock**” means an Award of Stock not subject to restrictions described in Section 5 herein.

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