

Sorrento Therapeutics, Inc.
Form DEF 14A
April 16, 2013
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SCHEDULE 14A INFORMATION

(Rule 14a-101)

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under § 240.14a-12

Sorrento Therapeutics, Inc.

(Name of Registrant as Specified in Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

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

(4) Date Filed:

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6042 Cornerstone Ct. West, Suite B

San Diego, California 92121

NOTICE OF 2013 SPECIAL MEETING OF
STOCKHOLDERS AND PROXY STATEMENT

Dear stockholder:

On behalf of our Board of Directors, I cordially invite you to attend the special meeting of stockholders of Sorrento Therapeutics, Inc. to be held at the offices of Latham & Watkins LLP located at 12636 High Bluff Drive, Suite 400, San Diego, California 92130 on April 26, 2013 at 10:00 a.m. local time, for the following purposes:

1. To approve the amendment and restatement of the Company's 2009 Stock Incentive Plan to increase the number of shares of common stock authorized to be issued pursuant to the Plan from 15,600,000 to 34,000,000, to modify the Plan's evergreen provision, to limit the aggregate value of awards which may be granted to any non-employee director in any fiscal year, to clarify that awards may be subject to any claw-back policy adopted by the Company and to institute a ten-year term for the amended and restated Plan.
2. To approve an amendment to the Company's Certificate of Incorporation to increase the number of shares of common stock authorized to be issued by the Company from 500,000,000 to 750,000,000.
3. To approve an amendment to the Company's Certificate of Incorporation to authorize the Board of Directors (the "Board") of the Company to effect a reverse stock split of the Company's common stock by a ratio of not less than 1-for-2 and not more than 1-for-150, with the Board of the Company having the discretion as to whether or not the reverse split is to be effected at any time prior to the first anniversary date of this meeting of stockholders, and with the exact ratio of any reverse split to be set at a whole number within the above range as determined by the Company's Board in its discretion (the "Reverse Split Proposal").
4. To approve an amendment to the Company's Certificate of Incorporation to authorize the Board, in the event the Reverse Split Proposal is approved, in its discretion, to reduce the number of shares of common stock authorized to be issued by the Company in proportion to the percentage decrease in the number of outstanding shares of common stock resulting from the reverse split (or a lesser decrease in authorized shares of common stock as determined by the Company's Board in its discretion).
5. To transact any other business that may properly come before the special meeting or any adjournment or postponement of the meeting.

These items of business are more fully described in the proxy statement accompanying this notice.

Our Board has fixed April 3, 2013 as the record date for the determination of stockholders entitled to notice of, and to vote at, the special meeting and at any adjournment or postponement of the meeting.

All stockholders are cordially invited to attend the special meeting. **Whether or not you expect to attend the special meeting, please complete, sign and date the enclosed proxy and return it promptly.** If you plan to attend the special meeting and wish to vote your shares personally, you may do so at any time before the proxy is voted.

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By Order of the Board of Directors,
/s/ Henry Ji, Ph.D.
Henry Ji, Ph.D.
President, Chief Executive Officer and Director

San Diego, California

April 16, 2013

Your vote is important. Please vote your shares whether or not you plan to attend the meeting.

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6042 Cornerstone Ct. West, Suite B

San Diego, California 92121

PROXY STATEMENT FOR THE 2013 SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON APRIL 26, 2013

The Board of Sorrento Therapeutics, Inc. is soliciting the enclosed proxy for use at the special meeting of stockholders to be held on April 26, 2013 at 10:00 a.m., local time, at the offices of Latham & Watkins LLP, located at 12636 High Bluff Drive, Suite 400, San Diego, California 92130. If you need directions to the location of the special meeting, please contact us at (858) 210-3700.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be Held on April 26, 2013.

This proxy statement and our annual report are available electronically at www.sorrentotherapeutics.com.

GENERAL INFORMATION ABOUT THE SPECIAL MEETING AND VOTING

Why did you send me this proxy statement?

We sent you this proxy statement and the enclosed proxy card because our Board is soliciting your proxy to vote at this special meeting of stockholders. This proxy statement summarizes information related to your vote at the special meeting. All stockholders who find it convenient to do so are cordially invited to attend the special meeting in person. However, you do not need to attend the meeting to vote your shares. Instead, you may simply complete, sign and return the enclosed proxy card.

We intend to begin mailing this proxy statement, the attached notice of special meeting and the enclosed proxy card on or about April 18, 2013 to all stockholders of record entitled to vote at the special meeting. Only stockholders who owned our common stock on April 3, 2013 are entitled to vote at the special meeting. On this record date, there were 336,075,440¹ shares of our common stock outstanding. Common stock is our only class of stock entitled to vote.

What am I voting on?

There are four proposals scheduled for a vote:

Proposal 1: Amendment and restatement of the Company's 2009 Stock Incentive Plan to increase the number of shares of common stock authorized to be issued pursuant to the Plan from 15,600,000 to 34,000,000, to modify the Plan's evergreen provision, to limit the aggregate value of awards which may be granted to any non-employee director in any fiscal year, to clarify that awards may be subject to any claw-back policy adopted by the Company and to institute a ten-year term for the amended and restated Plan.

Proposal 2: Amendment of our Certificate of Incorporation to increase the number of authorized shares of common stock from 500,000,000 to 750,000,000.

Proposal 3: Amendment of our Certificate of Incorporation to authorize a reverse stock split, with our Board having the discretion as to whether the split is effected and, if so, at what ratio.

¹ Per our 2012 10-K filed with the Securities and Exchange Commission on March 25, 2013.

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Proposal 4: In the event that Proposal 3 is approved, amendment of our Certificate of Incorporation to authorize a reduction in the number of authorized shares of common stock in proportion to the percentage decrease in the outstanding shares of common stock resulting from the reverse stock split (or a lesser decrease in authorized shares of common stock as determined by the Company's Board in its discretion).

How many votes do I have?

Each share of our common stock that you own as of April 3, 2013 entitles you to one vote.

How do I vote by proxy?

With respect to Proposal 1, the amendment and restatement of the Stock Incentive Plan, you may vote For or Against or abstain from voting. With respect to Proposal 2, the amendment of the Certificate of Incorporation to increase the number of authorized shares of common stock, you may vote For or Against or abstain from voting. With respect to Proposal 3, the amendment of the Certificate of Incorporation to authorize the reverse stock split, you may vote For or Against or abstain from voting. With respect to Proposal 4, the amendment of the Certificate of Incorporation to reduce the number of authorized shares of common stock if the reverse stock split is approved, you may vote For or Against or abstain from voting.

Stockholders of Record: Shares Registered in Your Name

If you are a stockholder of record, you may vote in person at the special meeting or vote by proxy using the enclosed proxy card. Whether or not you plan to attend the meeting, we urge you to vote by proxy to ensure that your vote is counted. You may still attend the meeting and vote in person even if you have already voted by proxy. To vote in person, come to the special meeting and we will give you a ballot at the special meeting. To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you properly complete your proxy card and send it to us in time to vote, your proxy (one of the individuals named on your proxy card) will vote your shares as you have directed. If you sign the proxy card but do not make specific choices, your shares will be, as permitted, voted as recommended by our Board. If any other matter is presented at the special meeting, your proxy (one of the individuals named on your proxy card) will vote in accordance with his or her best judgment. As of the date of this proxy statement, we knew of no matters that needed to be acted on at the meeting, other than those discussed in this proxy statement.

Beneficial Owners: Shares Registered in the Name of a Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank or other agent, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than directly from us. Simply complete and mail the proxy card to ensure that your vote is counted. To vote in person at the special meeting, you must obtain a valid proxy from your broker, bank or other agent. Follow the instructions from your broker or bank included with these proxy materials, or contact your broker or bank to request a proxy form.

May I revoke my proxy?

If you give us your proxy, you may revoke it at any time before it is exercised. You may revoke your proxy in any one of the three following ways:

you may send in another signed proxy with a later date;

you may notify our corporate secretary, Richard Vincent, in writing before the special meeting that you have revoked your proxy; or

you may notify our corporate secretary in writing before the special meeting and vote in person at the meeting.

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Can I vote via the Internet or by telephone?

If your shares are registered in the name of a bank or brokerage firm, you may be eligible to vote your shares electronically over the Internet or by telephone. A large number of banks and brokerage firms offer Internet and telephone voting. If your bank or brokerage firm does not offer Internet or telephone voting information, please complete and return your proxy card in the self-addressed, postage-paid envelope provided.

What constitutes a quorum?

The presence at the special meeting, in person or by proxy, of holders representing a majority of our outstanding common stock as of April 3, 2013, or approximately 168,037,721 shares, constitutes a quorum at the meeting, permitting us to conduct our business.

What vote is required to approve each proposal?

Proposal 1: Amendment and Restatement of our 2009 Stock Incentive Plan. To be approved, Proposal 1 must receive For votes from the holders of a majority of the shares of common stock present or represented by proxy and entitled to vote at the special meeting.

Proposal 2: Increase the Number of Authorized Common Shares. To be approved, Proposal 2 must receive For votes from the holders of a majority of the outstanding shares of common stock entitled to vote on the proposal.

Proposal 3: Authorization of Reverse Stock Split. To be approved, Proposal 3 must receive For votes from the holders of a majority of the outstanding shares of common stock entitled to vote on the proposal.

Proposal 4: Reduction in our Authorized Common Shares if the Reverse Stock Split is Approved. To be approved, Proposal 4 must receive For votes from the holders of a majority of the outstanding shares of common stock entitled to vote on the proposal.

Voting results will be tabulated and certified by our mailing and tabulating agent, Computershare Limited.

What is the effect of abstentions and broker non-votes?

Shares of common stock held by persons attending the special meeting but not voting, and shares represented by proxies that reflect abstentions as to a particular proposal, will be counted as present for purposes of determining the presence of a quorum. Abstentions are treated as shares present in person or by proxy and entitled to vote, so abstaining has the same effect as a negative vote for purposes of determining whether our stockholders have approved the amendment and restatement of our 2009 Stock Incentive Plan, the increase in the number of our authorized common shares, the reverse stock split and the reduction in our authorized common shares if the reverse stock split is approved.

Shares represented by proxies that reflect a broker non-vote will be counted for purposes of determining whether a quorum exists. A broker non-vote occurs when a nominee holding shares for a beneficial owner has not received instructions from the beneficial owner and does not have discretionary authority to vote the shares for certain non-routine matters. With regard to the amendment and restatement of our 2009 Stock Incentive Plan, the increase in the number of authorized common shares, the authorization of the reverse stock split and the reduction in our authorized common shares if the reverse stock split is approved, broker non-votes, if any, will not be counted as votes cast and will have no effect on the results of the votes.

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Who is paying the costs of soliciting these proxies?

We will pay all of the costs of soliciting these proxies. Our directors, officers and other employees may solicit proxies in person or by telephone, fax or email. We will pay our directors, officers and other employees no additional compensation for these services. We will ask banks, brokers and other institutions, nominees and fiduciaries to forward these proxy materials to their principals and to obtain authority to execute proxies. We will then reimburse them for their expenses. Our costs for forwarding proxy materials will not be significant.

How do I obtain an Annual Report on Form 10-K?

If you would like a copy of our annual report on Form 10-K for the fiscal year ended December 31, 2012 that we filed with the Securities and Exchange Commission (SEC) on March 25, 2013 we will send you one without charge. Please write to:

Sorrento Therapeutics, Inc.

6042 Cornerstone Ct. West, Suite B

San Diego, California 92121

Attn: Corporate Secretary

All of our SEC filings are also available free of charge in the investor relations section of our website at www.sorrentotherapeutics.com.

How can I find out the results of the voting at the special meeting?

Preliminary voting results will be announced at the special meeting. Final voting results will be published in our current report on Form 8-K to be filed with the SEC within four business days after the special meeting. If final voting results are not available to us in time to file a Form 8-K within four business days after the meeting, we intend to file a Form 8-K to publish preliminary results and, within four business days after the final results are known to us, file an additional Form 8-K to publish the final results.

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We are asking our stockholders to approve the 2013 amendment and restatement of the 2009 Stock Incentive Plan of Sorrento Therapeutics, Inc. (the Current Plan). The proposed 2013 amendment and restatement of the Current Plan is referred to herein as the Amended Plan.

Background

Our Board approved the Amended Plan on April 2, 2013, subject to approval by our stockholders. The proposed Amended Plan would become effective immediately upon stockholder approval at the special meeting of stockholders.

The proposed Amended Plan will implement the following material changes:

The Amended Plan will increase the maximum number of shares authorized for issuance under the Current Plan by 18,400,000 shares from 15,600,000 shares to 34,000,000 shares. As of March 15, 2013, 5,140,000 shares remained available for issuance under the Current Plan and 10,460,000 shares were subject to outstanding awards under the Current Plan.

The Amended Plan will modify the evergreen provision so that the total number of shares of our common stock reserved for issuance under the Amended Plan automatically increases at the beginning of each fiscal year by the lesser of (i) 1% of the aggregate number of shares of our common stock outstanding on the last day of the immediately preceding fiscal year, (ii) 5,000,000 shares (instead of the current 1,200,000 shares), or (iii) an amount approved by the Administrator, as further described below under Description of Proposed Amended Plan Share Reserve.

The Amended Plan will limit the aggregate value of awards which may be granted to any non-employee director in any fiscal year.

The Amended Plan clarifies that the Compensation Committee may require that awards granted pursuant to the Amended Plan be subject to the provisions of any claw-back policy adopted by the company, including any claw-back policy adopted to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act and related rules.

The Amended Plan will have a new ten-year term.

The following table summarizes the unvested equity awards outstanding and shares remaining available for issuance under the Current Plan, each as of March 15, 2013, and the proposed increase in shares authorized for issuance under the Amended Plan:

Award	Awards	As a % of Shares Outstanding⁽¹⁾	Dollar Value (\$)⁽²⁾
Unvested equity awards	8,000,210	2.4	1,600,042
Remaining equity awards available for issuance under Current Plan ⁽³⁾	5,140,000	1.5	1,028,000
Proposed increase in shares available for issuance under Amended Plan (over existing share reserve under Current Plan) ⁽⁴⁾	18,400,000	5.5	3,680,000
Total	31,540,210	9.4	6,308,042

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- (1) Based on 336,075,440 shares of our common stock outstanding as of March 15, 2013.
- (2) The closing share price on March 15, 2013 for our common stock was \$0.20.
- (3) Does not include possible future increases to the share reserve under the evergreen provision of the Current Plan.

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- (4) Does not include possible future increases to the share reserve under the evergreen provision of the Amended Plan. Pursuant to the evergreen provision, up to an additional 50,000,000 shares may become available for issuance under the Amended Plan during its ten-year term. These 50,000,000 shares represent 14.9% of the outstanding shares of our common stock as of March 15, 2013. If this Proposal 1 is not approved, the Amended Plan will not become effective, but the Current Plan will remain in effect.

Why Our Board Recommends That You Vote for the Amended Plan

Equity Incentive Awards Are Critical to Long-Term Stockholder Value Creation

Our equity incentive plan is critical to our long-term goal of building stockholder value. As discussed in the Executive and Director Compensation and Other Information section of this proxy statement, equity incentive awards are central to our compensation program and constitute a significant portion of our named executive officers' total direct compensation. Our Board and its Compensation Committee believe that our ability to grant equity incentive awards to new and existing employees, directors and eligible consultants has helped us attract, retain and motivate professionals with superior ability, experience and leadership capability. Historically, we have issued stock options and restricted stock under the Current Plan. These forms of equity compensation align the interests of our employees, directors and consultants with the interests of our stockholders, encourage retention and promote actions that result in long-term stockholder value creation.

Our equity incentive program is broad-based. As of March 15, 2013, all 19 of our employees had received grants of equity awards, all five of our non-employee directors had received grants of equity awards and four of our 13 consultants had received grants of equity awards. We believe we must continue to offer a competitive equity compensation plan in order to attract, retain and motivate the industry-leading talent imperative to our continued growth and success.

The Current Plan Will No Longer Have Shares Available for Grant

As of March 15, 2013, we had 5,140,000 shares available for grant under the Current Plan. **Based on historical usage, as discussed below, if we do not increase the share reserve during 2013, we estimate that we would need to make significant changes to our equity award practices in order to conserve the share reserve balance until the time of our 2014 annual meeting. This assumes we continue to grant awards consistent with our historical usage and current practices, as reflected in our historical burn rate discussed below, and noting that future circumstances may require us to change our current equity grant practices. The changes to our practices could limit our flexibility to provide competitive compensation and thus our ability to attract, motivate and retain highly qualified talent.**

Our Current Plan is the only equity incentive plan we currently have in place. While we could increase cash compensation to a limited extent if we are unable to grant equity incentives, we anticipate that we will have difficulty attracting, retaining and motivating our employees, directors and consultants if we are unable to issue equity grants to them. We also believe that equity-based grants are a more effective compensation vehicle than strictly cash, because they better align the financial interests of our employees with the interests of our stockholders, and promote actions that result in long-term stockholder value creation.

We Manage Our Equity Incentive Award Use Carefully

We manage our long-term stockholder dilution by limiting the number of equity awards granted annually. The Compensation Committee carefully monitors our total dilution and equity expense to ensure that we maximize stockholder value by granting only the appropriate number of equity awards necessary to attract, retain and motivate employees.

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Based on historical usage, our internal growth plans as well as anticipated usage in connection with the IgDraSol Transactions described in Proposal 2 below, we expect that the proposed 18,400,000 share increase in the number of shares available for issuance under the Amended Plan over the share reserve under the Current Plan would be sufficient for approximately two years of awards, assuming we continue to grant awards consistent with our historical usage and current practices, as reflected in our historical burn rate discussed below, and assuming we receive the maximum annual evergreen increases under the Current Plan during its ten-year term, and noting that future circumstances may require us to change our current equity grant practices. The share reserve under the Amended Plan could last for a longer or shorter period of time, depending on our future equity grant practices, which we cannot predict with any degree of certainty at this time.

The following table shows certain key equity metrics over the past three fiscal years:

Key Equity Metrics	2012	2011	2010
Equity burn rate ⁽¹⁾	3.0%	0.7%	0.9%
Dilution ⁽²⁾	4.8%	5.0%	4.8%
Overhang ⁽³⁾	3.5%	1.1%	0.8%

- (1) Equity burn rate is calculated by dividing the number of shares subject to equity awards granted during the fiscal year by the weighted-average number of shares outstanding during the period.
- (2) Dilution is calculated by dividing the sum of (x) the number of shares subject to equity awards outstanding at the end of the fiscal year and (y) the number of shares available for future grants, by the number of shares outstanding at the end of the fiscal year.
- (3) Overhang is calculated by dividing the number of shares subject to equity awards outstanding at the end of the fiscal year by the number of shares outstanding at the end of the fiscal year.

If the Amended Plan is approved, the issuance of the additional shares to be reserved under the Amended Plan would dilute existing stockholders by an additional 5.5% on a fully diluted basis, based on the number of shares of our common stock outstanding as of March 15, 2013 (which percentage would be 20.4% if the maximum additional 50,000,000 shares become available for issuance under the Amended Plan pursuant to the evergreen provision of the Amended Plan during its ten-year term).

If the Amended Plan is approved, we expect our overhang at the end of 2013 will be approximately 9.6% (including the shares that will be reserved for issuance under the Amended Plan but excluding any possible future increases to the share reserve under the Amended Plan pursuant to the evergreen provision). Such percentage would be 26.3% if the maximum additional 50,000,000 shares become available for issuance under the Amended Plan pursuant to the evergreen provision of the Amended Plan during its ten-year term. The foregoing calculations in this bullet are based on the actual number of shares outstanding as of December 31, 2012.

As described in the table above, the total aggregate equity value of the additional authorized shares being requested under the Amended Plan (above the shares remaining available for issuance under the Current Plan), based on the closing price of our common stock on March 15, 2013, is \$3,680,000. The total aggregate equity value of the 50,000,000 shares that may become available for issuance under the Amended Plan pursuant to the evergreen provision of the Amended Plan during its ten-year term, based on the closing price of our common stock on March 15, 2013, is \$10,000,000.

In light of the factors described above, and the fact that the ability to continue to grant equity compensation is vital to our ability to continue to attract and retain employees in the competitive labor markets in which we compete, the Board has determined that the size of the share reserve under the Amended Plan is reasonable and appropriate at this time. The Board will not create a subcommittee to evaluate the risks and benefits for issuing the additional authorized shares requested.

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Key Features of the Amended Plan

The proposed Amended Plan continues to include provisions designed to protect our stockholders' interests, including:

Administrator Independence. The Compensation Committee, comprised solely of independent non-employee directors, administers the plan.

Continued broad-based eligibility for equity awards. We grant equity awards to a significant number of employees, which are subject to time-based vesting, generally over a four-year period. By doing so, we link employee interests with stockholder interests throughout the organization and motivate our employees to act as owners of the business.

No discount stock options or stock appreciation rights. All stock options and stock appreciation rights will have an exercise price equal to or greater than the fair market value of our common stock on the date the stock option or stock appreciation right is granted.

Repricing is not allowed. Both the Current Plan and the proposed Amended Plan prohibit the repricing of stock options and stock appreciation rights without prior stockholder approval.

No dividends on performance awards. No dividends will be paid on performance awards under the Amended Plan unless and until such awards vest.

Description of Proposed Amended Plan

The following is a summary of the material features of the Amended Plan. This summary does not purport to be complete and is qualified in its entirety by reference to the Amended Plan, a copy of which is attached hereto as Appendix A.

Awards. The Amended Plan provides for the grant of the following awards:

Incentive Stock Options (ISO), which may be granted solely to our employees, including our executive officers; and

Non-Incentive Stock Options (NSO), stock appreciation rights, restricted stock awards, unrestricted stock awards, restricted stock unit awards, dividend equivalents, and performance awards, which may be granted to our directors, consultants or employees, including our executive officers.

Purpose. The purpose of the Amended Plan is to encourage and enable our directors, consultants and employees, including our executive officers, to acquire or increase their holdings of common stock and other interests in the Company in order to promote a closer identification of their interests with those of the Company and its stockholders, thereby further stimulating their efforts to enhance the Company's efficiency, soundness, profitability, growth and shareholder value.

Administration. The Amended Plan will be administered by the Board or the Compensation Committee of the Board, provided that the Board may not act in lieu of the Compensation Committee on certain matters. In this Proposal 1, the Board and the Compensation Committee are collectively referred to as the Administrator. Subject to the terms and conditions of the Amended Plan, the Administrator is authorized to select participants, determine the type and number of awards to be granted and the number of shares to which awards will relate or the amount of a performance award, specify dates at which awards will be exercisable or settled, including performance conditions that may be required as a condition thereof, set other terms and conditions of such awards, prescribe forms of award agreements, interpret and specify rules and regulations relating to the Amended Plan, and make all other determinations that may be necessary or advisable for the administration of the Amended Plan. Acceptable forms of consideration for the purchase of our common stock issued under the Amended Plan will be determined by the Administrator and may include cash, common stock previously owned by the participant, payment through a broker-assisted exercise or any

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combination of the foregoing. In addition, the Compensation Committee may delegate its authority under the Amended Plan to the extent permitted by the

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Delaware General Corporation Law, except delegation is limited where necessary to meet requirements under Rule 16b-3 under the Securities Exchange Act of 1934 or Section 162(m) of the Internal Revenue Code of 1986 (the Code). Neither we nor the Administrator may reprice any stock option or stock appreciation right granted under the Amended Plan without first obtaining the approval of the Company's stockholders.

Share Reserve. The Amended Plan authorizes an aggregate of 34,000,000 shares of our common stock. In addition, this amount will be automatically increased annually on the first day of each fiscal year, beginning in 2014, by the lesser of (i) 1% of the aggregate number of shares of our common stock outstanding on the last day of the immediately preceding fiscal year, (ii) 5,000,000 shares, or (iii) an amount approved by the Administrator. In no event will the aggregate number of shares available for issuance under the Amended Plan exceed 84,000,000 during the ten-year term of the Plan.

Shares of our common stock subject to options and other stock awards that have expired or otherwise terminate under the Amended Plan without having been exercised in full will again become available for grant under the Amended Plan. Shares of our common stock issued under the Amended Plan may include previously unissued shares or reacquired shares bought on the market or otherwise. If any shares of our common stock subject to a stock award are not delivered to a participant because such shares are withheld for the payment of taxes or the stock award is exercised through a net exercise, then the number of shares that are not delivered to participants shall again become available for grant under the Amended Plan. In addition, if the exercise of any stock award is satisfied by tendering shares of our common stock held by the participant, then the number of shares tendered shall become available for grant under the Amended Plan.

Limitation on Awards. The maximum number of shares that may be subject to awards granted under the Amended Plan to any individual other than a non-employee director in any calendar year may not exceed 10,000,000 shares of our common stock. The maximum number of shares that may be subject to awards granted under the Amended Plan to any non-employee director in any calendar year may not exceed 1,000,000 shares of our common stock. No individual may be granted, during any calendar year, awards initially payable in cash that could result in such individual receiving cash payments exceeding \$5,000,000 pursuant to such awards.

Stock Options. Stock options will be granted pursuant to stock option agreements. The exercise price for stock options cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the Amended Plan will vest at the rate specified in the option agreement. A stock option agreement may provide for early exercise of NSOs prior to vesting. Unvested shares of our common stock issued in connection with an early exercise may be repurchased by us upon termination of the participant's service. In general, the term of stock options granted under the Amended Plan may not exceed ten years. Unless the terms of a participant's stock option agreement provide for earlier or later termination, if a participant's service relationship with us, or any of our affiliates, ceases for any reason other than for cause, disability or death, the participant may exercise any vested options for up to 90 days after the date the service relationship ends, unless the terms of the stock option agreement provide for a longer or shorter period to exercise the option. If a participant's service relationship with us, or any of our affiliates, ceases due to disability, the participant may exercise any vested options for up to one year after the date the service relationship ends. If a participant's service relationship with us, or any of our affiliates, ceases due to death, or the participant dies within 30 days following the date the service relationship ends other than for cause, the participant's beneficiary may exercise any vested options for up to one year following the date of death. If a participant's relationship with us, or any of our affiliates, ceases due to termination for cause, the option will terminate at the time the participant's relationship with us, or any of our affiliates, terminates. In no event may an option be exercised after its expiration date.

Incentive stock options may be granted only to our employees, including executive officers. The aggregate fair market value, determined at the time of grant, of shares of our common stock with respect to ISOs that are exercisable for the first time by a participant during any calendar year under all of our equity plans may not exceed \$100,000. The options or portions of options that exceed this limit are automatically treated as NSOs. No

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ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock representing more than 10% of the total combined voting power of the Company or any of its affiliates unless the following conditions are satisfied:

the option exercise price is at least 110% of the fair market value of our common stock on the date of grant; and

the term of the ISO does not exceed five years from the date of grant.

Stock Appreciation Rights. Stock appreciation rights will be granted through a stock appreciation rights agreement. Each stock appreciation right is denominated in common stock equivalents. The exercise price of each stock appreciation right will be determined by the Administrator at the time of grant and will not be less than 100% of the fair market value of our common stock underlying the right. In general, the term of a stock appreciation right may not exceed ten years. Upon exercise of a stock appreciation right, we will pay the participant an amount equal to the excess of (i) the aggregate fair market value of our common stock on the date of exercise, over (ii) the aggregate exercise price determined by the Administrator on the date of grant. Stock appreciation rights will be paid either in cash, in shares of our common stock or partly in cash and partly in shares. Unless otherwise provided in a stock appreciation rights agreement, all stock appreciation rights will be settled in shares of our common stock, with cash paid for fractional shares. The Administrator may also impose any restrictions or conditions upon the vesting of stock appreciation rights that it deems appropriate. A recipient's stock appreciation rights agreement shall specify the terms upon which the recipient may exercise a stock appreciation right in the event the recipient's relationship with us, or any of our affiliates, ceases for any reason. Absent this disclosure, a stock appreciation right shall be governed by the same post-termination provisions applicable to options granted under the Amended Plan, as discussed above. Stock appreciation rights carry no voting or dividend rights or other rights associated with stock ownership.

Restricted and Unrestricted Stock Awards. Restricted stock awards will be granted pursuant to restricted stock award agreements. A restricted stock award may be issued for nominal or no cost and may be granted in consideration for the recipient's past or future services performed for the Company or any of its affiliates. Participants receiving a restricted stock award generally will have all of the rights of a stockholder with respect to such stock, including rights to vote the shares and receive dividends. Shares of our common stock acquired under a restricted stock award will be subject to forfeiture to us in accordance with vesting conditions based upon a schedule or performance criteria established by the Administrator. Generally, except as otherwise provided in the applicable restricted stock award agreement, restricted stock awards that have not vested will be forfeited upon the participant's termination of continuous service with us or an affiliate of ours for any reason. We will return the purchase price for a forfeited restricted stock award only if set forth in the participant's restricted stock award agreement.

Unrestricted stock awards are similar to restricted stock awards, provided that shares of our common stock acquired under an unrestricted stock award will be fully vested on the date of grant.

Restricted Stock Unit Awards. Restricted stock unit awards will be granted pursuant to restricted stock unit award agreements. Restricted stock units are denominated in common stock equivalents. They are typically awarded to participants without payment of consideration, but are subject to vesting conditions based upon a schedule or performance criteria established by the Administrator. Unlike restricted stock, the stock underlying restricted stock units will not be issued until the stock units have vested. Prior to settlement, restricted stock unit awards carry no voting or dividend rights or other rights associated with stock ownership, but unless otherwise provided in a participant's restricted stock unit award agreement, dividend equivalents will accrue from the date the award is granted until the date the shares underlying a restricted stock unit are issued. Except as otherwise provided in the applicable restricted stock unit award agreement, restricted stock units that have not vested will be forfeited upon the participant's termination of continuous service with us or an affiliate of ours for any reason.

Performance Awards. Performance awards may be granted, vest or be exercised based upon the attainment of certain performance goals during a certain period of time. Performance awards may be paid in the form of cash or shares of our common stock or a combination of cash and shares. The value of performance awards may

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be linked to the satisfaction of performance criteria established by the Administrator. The Administrator will also determine whether performance awards are intended to be performance-based compensation within the meaning of Section 162(m) of the Code. Following is a brief discussion of the requirements for awards to be treated as performance-based compensation within the meaning of Section 162(m) of the Code.

Performance-Based Compensation under Section 162(m) of the Code. The Compensation Committee may grant awards to employees who are or may be covered employees, as defined in Section 162(m) of the Code, that are intended to be performance-based compensation within the meaning of Section 162(m) of the Code in order to preserve the deductibility of these awards for federal income tax purposes. Under the Amended Plan, these performance-based awards may be paid in cash, shares, equity awards or a combination of cash, shares and equity awards. Participants are entitled to receive payment for a Code Section 162(m) performance-based award for any given performance period only to the extent that pre-established performance goals set by our Compensation Committee for the period are satisfied. These pre-established performance goals must be based on one or more of the following performance criteria: net earnings (either before or after interest, taxes, depreciation and amortization); gross or net sales or revenue; net income (either before or after taxes); adjusted net income; operating earnings or profit; cash flow (including, but not limited to, operating cash flow and free cash flow); return on assets; return on capital or return on invested capital; return on stockholders' equity; total stockholder return; return on sales; gross or net profit or operating margin; operating or other costs and expenses; improvements in expense levels; working capital; earnings per share or adjusted earnings per share; price per share of our common stock; regulatory body approval for commercialization of a product; implementation or completion of critical projects; market share; economic value; comparisons with various stock market indices; stockholders' equity; market recognition (including but not limited to awards and analyst ratings); financial ratios; net promoter score; customer satisfaction; and strategic team goals.

Any of the performance criteria may be measured with respect to the Company, or any subsidiary, division, business unit or individual, either in absolute terms, terms of growth or as compared to any incremental increase or decrease or as compared to results of a peer group(s) or to market performance indicators or indices. The Compensation Committee will define in an objective fashion the manner of calculating the performance criteria it selects to use for such awards. With regard to a particular performance period, the Compensation Committee will have the discretion to select the length of the performance period, the type of performance-based awards to be granted, and the performance goals that will be used to measure the performance for the period.

Except as provided by the Compensation Committee at the time of grant, the achievement of each performance goal will be determined in accordance with applicable accounting standards. The Compensation Committee may provide that objectively determinable adjustments will be made for purposes of determining the achievement of one or more of the performance goals established for an award. Any such adjustments will be based on items related to one or more of the following: a change in accounting principles; items relating to financing activities; financing activities; expenses for restructuring or productivity initiatives; other non-operating items; acquisitions; items attributable to the business operations of any entity acquired by us during the performance period; the disposal of a business or segment of a business; discontinued operations that do not qualify as a segment of a business under applicable accounting standards; any stock dividend, stock split, combination or exchange of shares occurring during the performance period; significant income or expense which are determined to be appropriate adjustments; unusual or extraordinary corporate transactions, events or developments; amortization of acquired intangible assets; items that are outside the scope of our core, on-going business activities; acquired in-process research and development; changes in tax laws; major licensing or partnership arrangements; asset impairment charges; gains or losses for litigation, arbitration and contractual settlements; or any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions.

Transferability of Awards. Generally, a participant may not transfer an award granted under the Amended Plan other than by will or the laws of descent and distribution. However, a participant may transfer an NSO pursuant to a domestic relations order. In addition, if provided in an award agreement, NSOs, stock appreciation rights settled in shares, restricted stock awards and performance awards granted under the Amended Plan may be transferred by instrument to the participant's immediate family or an inter vivos or testamentary trust or by gift to charitable institutions.

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Changes to Capital Structure. In the event there is a specified type of change in our capital structure not involving the receipt of consideration by us, such as a stock split, stock dividend, combination, recapitalization or reclassification, the number of shares reserved under the Amended Plan and the number of shares and exercise price, if applicable, of all outstanding stock awards will be appropriately adjusted.

Change in Control. In the event of a change in control of the Company, the Administrator may take one or more of the following actions without the consent of any Amended Plan participant or stockholder of the Company:

arrange for the Amended Plan and all outstanding stock awards under the Amended Plan to be assumed, continued or substituted for by the entity surviving the change in control, or its parent or subsidiary;

accelerate in part or in full the vesting provisions of stock awards held by participants;

arrange or otherwise provide for the payment of cash or other consideration to participants in exchange for the satisfaction or cancellation of such stock awards; or

generally make such other modifications, adjustments or amendments to outstanding awards or the Amended Plan as the Administrator deems necessary or appropriate.

In the event that an award outstanding under the Amended Plan is not exercised in full prior to consummation of a change in control in which the award is not being assumed, continued or substituted for, the award shall automatically terminate as of immediately prior to the consummation of the transaction. In addition, the Amended Plan provides that in the event a participant is involuntarily terminated in connection with, or within 12 months after, a change in control of the Company, each of the participant's stock awards outstanding under the Amended Plan that are assumed, continued or substituted for by a surviving entity in connection with the change in control will become fully vested, and any repurchase right with respect to the award will lapse in its entirety unless the applicable award agreement provides for a more restrictive acceleration of the vesting schedule or more restrictive limitations on the lapse of repurchase rights.

Involuntary termination includes (i) a discharge without cause, or (ii) voluntary resignation by the participant within 60 days following a material reduction in the participant's job responsibilities, an involuntary relocation of participant's work site to a location more than 50 miles from the participant's work site as of immediately prior to the change in control or a material reduction in the participant's total compensation other than as part of a reduction by the same percentage amount of the compensation of all other similarly-situated employees, directors and consultants.

A change in control generally includes:

a merger or consolidation of the Company after which the Company's stockholders as of immediately prior to the merger or consolidation own 50% or less of the voting power of the surviving entity;

a sale, transfer or disposition of all or substantially all of the Company's assets;

a complete liquidation or dissolution of the Company; or

an acquisition of 50% or more of the Company's outstanding stock by any person or group.

Plan Amendments; No Repricing without Stockholder Approval. The Board will have the authority to amend or terminate the Amended Plan. However, no amendment or termination of the Amended Plan can adversely affect any rights under outstanding awards unless agreed to in writing by the affected participant. We will obtain stockholder approval of any amendments to the Amended Plan as required by applicable law.

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Neither the Company nor the Administrator shall, without stockholder approval, allow for a repricing of options.

Term. The Amended Plan will terminate on the tenth anniversary of the date of its approval by the Board, unless the Board terminates it earlier.

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Federal Income Tax Consequences Associated with the Amended Plan

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

Non-Qualified Stock Options. For federal income tax purposes, if an optionee is granted an NSO under the Amended Plan, the optionee will not have taxable income on the grant of the option, nor