ASPEN TECHNOLOGY INC /DE/
Form 10-K/A
April 22, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

FORM 10-K

(Mark One)

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended June 30, 2009

or

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number: 0-24786

Aspen Technology, Inc.

(Exact name of registrant as specified in its charter)

Delaware State or other jurisdiction of incorporation or organization	**04-2739697** (I.R.S. Employer Identification No.)
200 Wheeler Road **Burlington, Massachusetts** (Address of principal executive offices)	**01803** (Zip Code)

Registrant s telephone number, including area code: **781-221-6400**

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
Common stock, $0.10 par value per share

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K ($229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes o No x

As of December 31, 2008, the aggregate market value of common stock (the only outstanding class of common equity of the registrant) held by non-affiliates of the registrant was $448,575,506 based on a total of 60,454,920 shares of common stock held by non-affiliates and on a closing price of $7.42 on December 31, 2008 for the common stock as reported on The Pink OTC Markets Inc.

There were 92,139,550 shares of common stock outstanding as of April 16, 2010.

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Our fiscal year ends on June 30, and references herein to a specific fiscal year are to the twelve months ended June 30 of such year. For example, fiscal 2009 refers to the fiscal year ended June 30, 2009.

Aspen HYSYS and aspenONE are registered trademarks of Aspen Technology, Inc.

EXPLANATORY NOTE

This Amendment No. 1 to Form 10-K, which we refer to as this Form 10-K/A, amends and restates portions of our Annual Report on Form 10-K for the fiscal year ended June 30, 2009 as originally filed with the SEC on November 9, 2009, which we refer to as the original Form 10-K.

This Form 10-K/A is being filed to:

- delete from Item 1A. Risk Factors one of the risk factors (Because some of our software products incorporate or otherwise require technology licensed from, or provided by, third parties, the loss of our right to use that third-party technology or defects in that technology could harm our business) previously set forth therein;

- supplement information set forth under the heading Item 11. Executive Compensation Compensation Discussion and Analysis and make conforming changes elsewhere in Item 11. Executive Compensation ; and

- provide additional information in Item 13. Certain Relationships and Related Transactions, and Director Independence about our policy with respect to related-party transactions.

Except as otherwise expressly indicated herein, this Form 10-K/A has not been updated for events occurring after the filing of the original Form 10-K.

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PART I

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below before purchasing our common stock. The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations. If any of the following risks actually occur, our business, financial condition, results of operations or cash flows would likely suffer. In that case, the trading price of our common stock could fall, and you may lose all or part of the money you paid to buy our common stock.

Risks Related to Our Business

Our operating results and stock price will be adversely affected from our new subscription-based licensing offering and will be further adversely affected if customers do not react favorably to our new subscription-based licensing offering.

In July 2009, we introduced a new license offering for our aspenONE software suite in which customers are granted access to specific sets of our software products. Access to the aspenONE suite is calculated and priced on the basis of exchangeable units of measurement, or tokens. Maintenance and updates are included in the license, as well as access to any new software products added to the aspenONE suite during the license term.

Previously, we typically recognized the net present value of license fees over the license term as revenue in the period in which the license agreement was signed and the software was delivered to the customer. We expect our new aspenONE licensing offering to result in revenue being recognized on a subscription basis over the term of multi-year contracts. Although we expect the new licensing offering to result in increased customer usage and higher revenues over time, we are not able to predict the rate of adoption of the new license offering, and therefore cannot predict the timing or amount of future revenues or level of profitability. As referenced in our current report on Form 8-K filed with the SEC on July 9, 2009, we expect that this change from predominantly up-front revenue recognition will result in our reporting significantly lower revenue and large operating losses in the near-term. The announcement of such losses as well as the lack of visibility into future operating results may have a significant adverse effect on our stock price.

Our operating results depend on customers in or serving the energy, chemicals, pharmaceutical, and engineering and construction industries, which are highly cyclical, and our operating results may suffer if these industries continue to experience an economic downturn.

Our operating results depend on companies in or serving the energy, chemicals, engineering and construction and pharmaceutical industries. Accordingly, our future success depends upon the continued demand for manufacturing optimization software and services by companies in these process manufacturing industries. These industries are highly cyclical and highly reactive to the price of oil, as well as general economic conditions. At least one of our customers has filed for bankruptcy protection, which may affect associated cash receipts and the extent to which revenue from this customer may be recognized. There is no assurance that other customers may not also seek bankruptcy or other similar relief

from creditors, which could adversely affect our results of operations.

Adverse changes in the economy and global economic and political uncertainty have previously caused delays and reductions in IT spending by our customers and a consequent deterioration of the markets for our products and services, particularly our manufacturing/supply chain product suites. If adverse economic conditions persist, we would likely experience reductions, delays and postponements of customer purchases that will negatively impact our operating results.

In addition, in the past, worldwide economic downturns and pricing pressures experienced by energy, chemical, and other process industries have led to consolidations and reorganizations. These downturns, pricing pressures and reorganizations have caused delays and reductions in capital and operating expenditures by many of these companies. These delays and reductions have reduced demand for products and services like ours. A recurrence of these industry patterns, including any recurrence that may occur in connection with current global economic events,

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as well as general domestic and foreign economic conditions and other factors that reduce spending by companies in these industries, could harm our operating results in the future.

Securities litigation based on our restatement of our consolidated financial statements due to our prior software accounting practices may subject us to substantial damages and expenses, may require significant management time, and may damage our reputation.

In March 2006, we settled class action litigation, including related derivative claims, arising out of our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which we restated in March 2005. Members of the class who opted out of the settlement (representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period) brought their own state or federal law claims against us, referred to as opt-out claims.

Separate actions were filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. One of these actions was settled. The claims in the remaining actions (described below) include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in our restated consolidated financial statements referenced in the class action.

- *Blecker, et al. v. Aspen Technology, Inc., et al*., filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, is an opt-out claim asserted by persons who received 248,411 shares of our common stock in an acquisition. Fact discovery in this action closed on July 18, 2008, and a non-jury trial began on November 3, 2009. On October 17, 2008, the plaintiffs filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al*., Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act. We served a motion to dismiss on December 3, 2008 which the plaintiffs have opposed. The motion was argued before the court on March 23, 2009 and is pending.

- *380544 Canada, Inc., et al. v. Aspen Technology, Inc.*, et al., filed on February 15, 2007 in the federal district court for the Southern District of New York and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement. Certain motions to dismiss filed by other defendants were resolved on May 5, 2009, and discovery is scheduled to conclude on February 12, 2010.

The remaining claims in the Blecker and 380544 Canada actions referenced above are for damages totaling at least $20 million, not including claims for treble damages and attorneys fees. We plan to defend these actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

We are required to advance legal fees (subject to undertakings of repayment if required) and may be required to indemnify certain of our current or former directors and officers in connection with civil, criminal or regulatory proceedings or actions, and such indemnification commitments

may be costly. Our executive and organization liability insurance policies provide only limited liability protection relating to such actions against us and certain of our officers and directors, and will likely not cover the costs of director and officer indemnification or other liabilities incurred by us; accordingly, if we are unable to achieve a favorable settlement thereof, our financial condition could be materially harmed. Also, increased premiums could materially harm our financial results in future periods. Our inability to obtain coverage due to prohibitively expensive premiums would make it more difficult to retain and attract officers and directors and expose us to potentially self-funding any potential future liabilities ordinarily mitigated by such liability insurance.

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The modification of the consent decree with the Federal Trade Commission and the related settlement with Honeywell International, Inc. could have a material adverse effect on our business and financial condition.

In December 2004, we entered into a consent decree with the Federal Trade Commission (FTC) with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech Ltd. and related subsidiaries of AEA Technology plc (Hyprotech) in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree, we entered into an agreement with Honeywell International, Inc. (Honeywell), on October 6, 2004 (Honeywell Agreement), pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products. We are subject to ongoing compliance obligations under the FTC consent decree. We responded to requests by the Staff of the FTC beginning in 2006 for information relating to the Staff s investigation of whether we have complied with the consent decree. In addition, the FTC voted to recommend to the Consumer Litigation Division (Division) of the U.S. Department of Justice that the Division commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. Although we believe that we complied with the consent decree and that the assertions by the FTC Staff were without merit, we engaged in settlement discussions with the FTC Staff regarding this matter. Following such discussions, on July 6, 2009, we announced that the FTC closed the investigation relating to the alleged violations of the decree, and issued an order modifying the consent decree. Following a thirty-day period for public comment on the modification to the original decree, the modified order became final on August 20, 2009. The modification to the 2004 consent decree requires that we continue to provide the ability for users to save input variable case data for Aspen HYSYS and Aspen HYSYS Dynamics software in a standard portable format, which will make it easier for users to transfer case data from later versions of the products to earlier versions. We will also provide documentation to Honeywell of the Aspen HYSYS and Aspen HYSYS Dynamics input variables, as well as documentation of the covered heat exchange products. These requirements will apply to all existing and future versions of the covered products up to 2014. In addition, in connection with the settlement of the related litigation with Honeywell, we have provided to Honeywell a license to modify and distribute (in object code form) certain versions of our flare system analyzer software. There is no assurance that the actions required by the FTC s modified order and related settlement with Honeywell will not provide Honeywell with additional competitive advantages that could materially adversely affect our results of operations.

In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to remedy the material weaknesses identified as of June 30, 2009 could result in material misstatements in our financial statements.

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934 (Exchange Act). Our management identified four material weaknesses in our internal control over financial reporting as of June 30, 2009. A material weakness is defined as a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The material weaknesses identified by management as of June 30, 2009 consisted of:

- inadequate and ineffective monitoring controls;

- inadequate and ineffective controls over the periodic financial close process;

- inadequate and ineffective controls over income tax accounting and disclosure; and

- inadequate and ineffective controls over the recognition of revenue.

As a result of these material weaknesses, our management concluded as of June 30, 2009 that our internal control over financial reporting was not effective based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control An Integrated Framework (September 1992).

We have begun to implement and continue to implement remedial measures designed to address these material weaknesses. If these remedial measures are insufficient to address these material weaknesses, or if additional

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material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, we may fail to meet our future reporting obligations on a timely basis, our consolidated financial statements may contain material misstatements, we could be required to restate our prior period financial results, our operating results may be harmed, we may be subject to class action litigation, and if we regain listing on a public exchange, our common stock could be delisted from that exchange. Any failure to address the identified material weaknesses or any additional material weaknesses in our internal control could also adversely affect the results of the periodic management evaluations regarding the effectiveness of our internal control over financial reporting that are required to be included in our annual reports on Form 10-K. Internal control deficiencies could also cause investors to lose confidence in our reported financial information. We can give no assurance that the measures we plan to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or additional restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

If in the future we are not current in our SEC filings, we will face several adverse consequences.

If we are unable to remain current in our financial filings, investors in our securities will not have information regarding our business and financial condition with which to make decisions regarding investment in our securities. In addition, we would not be able to have a registration statement under the Securities Act of 1933 (Securities Act), covering a public offering of securities declared effective by the SEC, and we would not be able to make offerings pursuant to existing registration statements or pursuant to certain private placement rules of the SEC under Regulation D to any purchasers not qualifying as accredited investors. The lack of an effective registration statement would also result in our employees being unable to exercise vested options, which could affect our ability to attract and retain qualified personnel. We also would not be eligible to use a short form registration statement on Form S-3 for a period of twelve months after the time we became current in our filings. These restrictions may impair our ability to raise funds should we desire to do so and may adversely affect our financial condition. If we are unable to remain current in our filings, and we are not able to obtain waivers under our financing arrangements, it might become necessary to repay certain borrowings, which could have a material adverse effect on our results of operations.

Our common stock has been delisted from The NASDAQ Stock Market and transferred to the Pink Sheets electronic quotation service, which may, among other things, reduce the price of our common stock and the levels of liquidity available to our stockholders.

As a result of our inability to timely file the Form 10-K for fiscal year 2007, NASDAQ issued a Staff Determination to us that, in the absence of a request for a hearing, would have resulted in suspension of trading of our common stock, and filing of a Form 25-NSE with the SEC to remove our securities from listing and registration on The NASDAQ Stock Market. NASDAQ subsequently issued an Additional Staff Determination citing our inability to timely file our Form 10-Q for the quarterly period ended September 30, 2007 as an additional basis for delisting our securities. An oral hearing was held at our request on November 15, 2007. At the hearing, we requested an extension of time to cure our SEC filing deficiency. The NASDAQ Listing Qualifications Panel, or the Panel, determined on January 7, 2008 to grant our request for continued listing, subject to certain conditions, including filing our Form 10-K for fiscal year 2007 and our Form 10-Q for the quarterly period ended September 30, 2007, by January 18, 2008. On January 28, 2008, the Panel granted our request for an extension for continued listing on The NASDAQ Global Market through February 8, 2008. On February 14, 2008, we received a letter advising us that the NASDAQ Listing Qualifications Panel had determined to delist our shares from The NASDAQ Stock Market, and trading of our shares was suspended effective at the open of business on February 19, 2008. Our common stock has been quoted on the Pink OTC Markets Inc. electronic quotation service beginning on February 19, 2008.

There is no assurance that we will regain listing of our common stock on a public exchange. If we regain listing and thereafter fail to keep current in our SEC filings or to comply with the applicable continued listing requirements, our common stock might be and subsequently would

trade in the Pink Sheets electronic quotation service, or the Pink Sheets. The trading of our common stock in the Pink Sheets may reduce the price of our common stock and the levels of liquidity available to our stockholders. In addition, the trading of our common stock in the Pink Sheets would materially adversely affect our access to the capital markets, and the limited liquidity and potentially reduced price of our common stock could materially adversely affect our ability to raise capital through alternative financing

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sources on terms acceptable to us or at all. Stocks that trade in the Pink Sheets are no longer eligible for margin loans, and a company trading in the Pink Sheets cannot avail itself of federal preemption of state securities or blue sky laws, which adds substantial compliance costs to securities issuances, including pursuant to employee option plans, stock purchase plans and private or public offerings of securities. If we regain listing and are delisted in the future and transferred to the Pink Sheets, there may also be other negative implications, including the potential loss of confidence by suppliers, customers and employees, and the loss of institutional investor interest in our company.

Our international operations are complex and if we fail to manage those operations effectively, the growth of our business would be limited and our operating results would be adversely affected.

As of October 18, 2009, we had 26 offices in 21 countries. We sell our products primarily through a direct sales force located throughout the world. In the event that we are unable to adequately staff and maintain our foreign operations, we could face difficulties managing our international operations. We also rely, to a lesser extent, on distributors and resellers to sell our products and market our services internationally, and our inability to manage and maintain those relationships would limit our ability to generate revenue outside the U.S. Effective October 6, 2009, we terminated a reseller outside the U.S. See our risk factor below titled Our revenue growth, operating results, financial condition or cash flows may be materially and adversely affected by recent events in connection with reseller relationships. The complexities of our operations also require us to make significant expenditures to ensure that our operations are compliant with regulatory requirements in numerous foreign jurisdictions. To the extent we are unable to manage the various risks associated with our complex international operations effectively, the growth and profitability of our business may be adversely affected.

Our business may suffer if we fail to address challenges associated with transacting business internationally.

Customers outside the U.S. accounted for a material amount of our total revenues in fiscal 2009 and 2008. We anticipate that revenues from customers outside the U.S. will continue to account for a material portion of our total revenues for the foreseeable future. Our operations outside the U.S. are subject to additional risks, including:

- unexpected changes in regulatory requirements, exchange rates, tariffs and other barriers;
- political and economic instability and possible nationalization of property by governments without compensation to the owners;
- less effective protection of intellectual property;
- difficulties and delays in translating products and product documentation into foreign languages;

- difficulties and delays in negotiating software licenses compliant with accounting revenue recognition requirements in the U.S.;

- difficulties in collecting trade accounts receivable in other countries; and

- adverse tax consequences.

In addition, the impact of future exchange rate fluctuations on our operating results cannot be accurately predicted. From time to time we have engaged in economic hedging of a significant portion of installment contracts denominated in foreign currencies. In fiscal 2009 we stopped engaging in economic hedging; however, we may resume this practice in the future. Any hedging policies we implement may not be successful, and the cost of these hedging techniques may have a significant negative impact on our operating results.

Competition from software offered by current competitors and new market entrants, as well as from internally developed solutions, could adversely affect our ability to sell our software products and related services and could result in pressure to price our products in a manner that reduces our margins.

Our markets in general are highly competitive and differ among our three principal product areas: engineering, manufacturing, and supply chain management. Our engineering software competes with products of businesses such as ABB Ltd, Chemstations, Inc., Honeywell International, Inc., Invensys plc, KBC Advanced Technologies plc, and Shell Global Solutions International BV. Our manufacturing software competes with products of companies such as

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ABB Ltd., Honeywell International, Inc., Invensys plc, OSIsoft, Inc., Rockwell Automation, Inc., Siemens AG and SAP. Our supply chain management software competes with products of companies such as i2 Technologies, Inc., Infor Global Solutions, Manugistics, Inc. (a subsidiary of JDA Software Group, Inc.), Oracle Corporation, and SAP. In addition, we face competition in all areas of our business from large companies in the process industries that have internally developed their own proprietary software solutions.

Many of our current and potential competitors have greater financial, technical, marketing, service and other resources than we have. As a result, these companies may be able to offer lower prices, additional products or services, or other incentives that we cannot match or offer. These competitors may be in a stronger position to respond more quickly to new technologies and may be able to undertake more extensive marketing campaigns. We believe they also have adopted and may continue to pursue more aggressive pricing policies and make more attractive offers to potential customers, employees and strategic partners. In addition, many of our competitors have established, and may in the future continue to establish, cooperative relationships with third parties to improve their product offerings and to increase the availability of their products in the marketplace. Competitors with greater financial resources may make strategic acquisitions to increase their ability to gain market share or improve the quality or marketability of their products.

Competition could seriously impede our ability to sell additional software products and related services on terms favorable to us. Businesses may continue to enhance their internally developed solutions, rather than investing in commercial software such as ours. Our current and potential commercial competitors may develop and market new technologies that render our existing or future products obsolete, unmarketable or less competitive. In addition, if these competitors develop products with similar or superior functionality to our products, we may need to decrease the prices for our products in order to remain competitive. If we are unable to maintain our current pricing due to competitive pressures, our margins will be reduced and our operating results will be negatively affected. We cannot assure you that we will be able to compete successfully against current or future competitors or that competitive pressures will not materially adversely affect our business, financial condition and operating results.

If we fail to develop new software products or enhance existing products and services, we will be unable to implement our product strategy successfully and our business could be seriously harmed.

Enterprises are requiring their application software vendors to provide greater levels of functionality and broader product offerings. Moreover, competitors continue to make rapid technological advances in computer hardware and software technology and frequently introduce new products, services and enhancements. We must continue to enhance our current product line and develop and introduce new products and services that keep pace with increasingly sophisticated customer requirements and the technological developments of our competitors. Our business and operating results could suffer if we cannot successfully respond to the technological advances of competitors, or if our new products or product enhancements and services do not achieve market acceptance.

Under our business plan, we are implementing a product strategy that unifies our software solutions under the aspenONE brand with differentiated aspenONE vertical solutions targeted at specific process industry segments. We cannot assure you that our product strategy will result in products that will meet market needs and achieve significant market acceptance.

Defects or errors in our software products could harm our reputation, impair our ability to sell our products and result in significant costs to us.

Our software products are complex and may contain undetected defects or errors. We have not suffered significant harm from any defects or errors to date, but we have from time to time found defects in our products and we may discover additional defects in the future. We may not be able to detect and correct defects or errors before releasing products. Consequently, we or our customers may discover defects or errors after our products have been implemented. We have in the past issued, and may in the future need to issue, corrective releases of our products to remedy defects or errors. The occurrence of any defects or errors could result in:

- lost or delayed market acceptance and sales of our products;

- delays in payment to us by customers;

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- product returns;
- injury to our reputation;
- diversion of our resources;
- legal claims, including product liability claims, against us;
- increased service and warranty expenses or financial concessions; and
- increased insurance costs.

Defects and errors in our software products could result in an increase in service and warranty costs or claims for substantial damages against us.

We may be subject to significant expenses and damages because of liability claims related to our products and services.

We may be subject to significant expenses and damages because of liability claims related to our products and services. The sale and implementation of certain of our software products and services, particularly in the areas of advanced process control, supply chain and optimization, entail the risk of product liability claims and associated damages. Our software products and services are often integrated with our customers networks and software applications and are used in the design, operation and management of manufacturing and supply chain processes at large facilities, often for mission critical applications.

Any errors, defects, performance problems or other failure of our software could result in significant liability to us for damages or for violations of environmental, safety and other laws and regulations. We are currently defending a customer claim of approximately $5 million that certain of our software products and implementation services failed to meet customer expectations. In addition, our software products and implementation services could continue to give rise to warranty and other claims. We are unable to determine whether resolution of any of these matters will have a material adverse impact on our financial position, cash flows or results of operations, or, in many cases, reasonably estimate the amount of the loss, if any, that may result from the resolution of these matters.

Our agreements with our customers generally contain provisions designed to limit our exposure to potential product liability claims. It is possible, however, that the limitation of liability provisions in our agreements may not be effective as a result of federal, foreign, state or local

laws or ordinances or unfavorable judicial decisions. A substantial product liability judgment against us could materially and adversely harm our operating results and financial condition. Even if our software is not at fault, a product liability claim brought against us could be time-consuming, costly to defend and harmful to our operations.

Implementation of some of our products can be difficult and time-consuming, and customers may be unable to implement those products successfully or otherwise achieve the benefits attributable to them.

Some scheduling applications and integrated supply chain products must integrate with the existing computer systems and software programs of our customers. This can be complex, time-consuming and expensive. As a result, some customers may have difficulty in implementing those products or be unable to implement them successfully or otherwise achieve the benefits attributable to them. Delayed or ineffective implementation of those software products or related services may limit our ability to expand our revenues and may result in customer dissatisfaction, harm to our reputation and customer unwillingness to pay the fees associated with these products.

We may suffer losses on fixed-price professional service engagements.

We undertake a portion of our professional service engagements on a fixed-price basis. Under these types of engagements, we bear the risk of cost overruns and inflation, and in the past we have experienced cost overruns, which on occasion have been significant. Should the number of our fixed-price engagements increase in the future, we may experience additional cost overruns which could have a more pronounced impact on our operating results.

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We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.

We regard our software as proprietary and rely on a combination of copyright, patent, trademark and trade secret laws, license and confidentiality agreements, and software security measures to protect our proprietary rights. We have registered or have applied to register several of our significant trademarks in the U.S. and in certain other countries. We generally enter into non-disclosure agreements with our employees and customers, and historically have restricted access to our software products source codes, which we regard as proprietary information. In a few cases, we have provided copies of the source code for some of our products to customers solely for the purpose of special product customization and have deposited copies of the source code for some of our products in third-party escrow accounts as security for ongoing service and license obligations. In these cases, we rely on non-disclosure and other contractual provisions to protect our proprietary rights.

The steps we have taken to protect our proprietary rights may not be adequate to deter misappropriation of our technology or independent development by others of technologies that are substantially equivalent or superior to our technology. Any misappropriation of our technology or development of competitive technologies could harm our business and could force us to incur substantial costs in protecting and enforcing our intellectual property rights. The laws of some countries in which our products are licensed do not protect our intellectual property rights to the same extent as the laws of the U.S.

Third-party claims that we infringe the intellectual property rights of others may be costly to defend or settle and could damage our business.

We cannot be certain that our software and services do not infringe issued patents, copyrights, trademarks or other intellectual property rights of third parties. Litigation regarding intellectual property rights is common in the software industry, and we may be subject to legal proceedings and claims from time to time, including claims of alleged infringement of intellectual property rights of third parties by us or our licensees concerning their use of our software products and integration technologies and services. Although we believe that our intellectual property rights are sufficient to allow us to market our software without incurring liability to third parties, third parties may bring claims of infringement against us. Because our software is integrated with our customers networks and business processes, as well as other software applications, third parties may bring claims of infringement against us, as well as our customers and other software suppliers, if the cause of the alleged infringement cannot easily be determined. Such claims may be with or without merit.

Claims of alleged infringement may have a material adverse effect on our business and may discourage potential customers from doing business with us on acceptable terms, if at all. Defending against claims of infringement may be time-consuming and may result in substantial costs and diversion of resources, including our management s attention to our business. Furthermore, a party making an infringement claim could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our software or require that we re-engineer some or all of our products. Claims of intellectual property infringement also might require us to enter costly royalty or license agreements. We may be unable, however, to obtain royalty or license agreements on terms acceptable to us or at all. Our business, operating results and financial condition could be harmed significantly if any of these events occurred, and the price of our common stock could be adversely affected. Furthermore, former employers of our current and future employees may assert that our employees have improperly disclosed confidential or proprietary information to us. In addition, we have agreed, and may agree in the future, to indemnify certain of our customers against claims that our software infringes upon the intellectual property rights of others. Although we carry general liability insurance, our current insurance coverage may not apply to, and likely would not protect us from, liability that may be imposed under any of the types of claims described above.

If we are not successful in attracting, integrating and retaining highly qualified personnel, we may not be able to successfully implement our business strategy.

Our ability to establish and maintain a position of technology leadership in the highly competitive software market depends in large part upon our ability to attract, integrate and retain highly qualified managerial, sales, technical and accounting personnel. Competition for qualified personnel in the software industry is intense. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring

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and retaining highly skilled employees with appropriate qualifications. Our future success will depend in large part on our ability to attract, integrate and retain a sufficient number of highly qualified personnel, and there can be no assurance that we will be able to do so.

Our revenue growth, operating results, financial condition or cash flows may be materially and adversely affected by recent events in connection with reseller relationships.

Prior to October 6, 2009, we had an exclusive reseller relationship covering certain countries in the Middle East with a reseller known as, AspenTech Middle East W.L.L., a Kuwait corporation (ATME or the reseller). Effective October 6, 2009, we terminated the reseller relationship for material breach by the reseller based on certain actions of the reseller. On November 2, 2009 the reseller filed a Claim Form (Arbitration) in the High Court of Justice, Queen s Bench Division, Commercial Court, London, England, reference 2009 Folio 1436 in the matter of an intended arbitration between the reseller and us, seeking an injunction against certain activities by us in the alleged former territory of the reseller. We believe that the reseller s claims are without merit, inasmuch as our termination of the relationship was based on actions by the reseller constituting material breach as defined in the reseller agreement document, and that the reseller is not entitled to such an injunction. We therefore intend to defend the claims vigorously. We can provide no assurance as to the outcome of this proceeding or the likelihood of the filing of additional proceedings such as a full arbitration, and these claims may result in judgments against us for significant damages and a possible injunction that would threaten our ability to do business directly in certain countries in the Middle East. In addition, regardless of the outcome, such claims may result in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business. The reseller agreement document relating to the terminated relationship contained a provision whereby we could be liable for a termination fee if the agreement were terminated other than for material breach. This fee would be calculated based on a formula contained in the reseller agreement that we believe was originally developed based on certain assumptions about the future financial performance of the reseller, as well as the reseller s actual financial performance. Based on the formula and the financial information provided to us by the reseller, which we have not had the opportunity to verify independently, a recent calculation associated with termination other than for material breach based on the formula would result in a termination fee of between $60 million and $77 million. Under the terminated reseller agreement document, no termination fee is owed on termination for material breach.

Risks Related to Our Common Stock

Our common stock may experience substantial price and volume fluctuations.

The equity markets have from time to time experienced extreme price and volume fluctuations, particularly in the high technology sector, and those fluctuations have often been unrelated to the operating performance of particular companies. In addition, factors such as changes to our business model, our financial performance, announcements of technological innovations or new products by us or our competitors, as well as market conditions in the computer software or hardware industries, may have a significant impact on the market price of our common stock.

In the past, following periods of volatility in the market price of a public company s securities, securities class action litigation has often been instituted against the company. This type of litigation against us could result in substantial liability and costs and divert management s attention and resources.

Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from executing our business plan.

We expect that our current cash balances, future cash flows from our operations, and continued ability to sell installment receivable contracts will be sufficient to meet our anticipated cash needs for at least the next twelve months. We may need to obtain additional financing thereafter or earlier, however, if our current plans and projections prove to be inaccurate or our expected cash flows prove to be insufficient to fund our operations because of lower-than-expected revenues, fewer sales of installment receivable contracts, unanticipated expenses or other unforeseen difficulties.

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Our ability to obtain additional financing will depend on a number of factors, including market conditions, our operating performance, the quality of our installment receivable contracts, and the availability of capital in the credit markets. These factors may make the timing, amount, terms and conditions of any financing unattractive. If adequate funds are not available, or are not available on acceptable terms, we may have to forego strategic acquisitions or investments, reduce or defer our development activities or delay our introduction of new products and services.

Any additional capital raised through the sale of equity or convertible debt securities may dilute the existing shareholder percentage ownership of our common stock. Furthermore, any new securities we issue could have rights, preferences and privileges superior to our common stock. Capital raised through debt financings could require us to make periodic interest payments and could impose potentially restrictive covenants on the conduct of our business.

Our corporate documents and provisions of Delaware law may prevent a change in control or management that stockholders may consider desirable.

Section 203 of the Delaware General Corporation Law, our charter and our by-laws contain provisions that might enable our management to resist a takeover of our company. These provisions include:

- limitations on the removal of directors;
- a classified board of directors, so that not all members of our board are elected at one time;
- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to act by written consent or to call special meetings;
- the ability of our board of directors to make, alter or repeal our by-laws; and
- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval.

These provisions could:

- have the effect of delaying, deferring or preventing a change in control of our company or a change in our management that stockholders may consider favorable or beneficial;

- discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions; and

- limit the price that investors might be willing to pay in the future for shares of our common stock.

Sales of shares of common stock issued upon the conversion of our previously outstanding Series D-1 preferred stock may result in a decrease in the price of our common stock.

Private equity funds managed by Advent International Corporation have the right to require that we register under the Securities Act the shares of common stock that were issued upon the conversion of our previously outstanding Series D-1 preferred stock and upon the exercise of certain previously outstanding warrants. In addition, these funds could sell certain of such shares without registration. In May 2006, we received a demand letter from such funds requesting the registration of all of the shares of common stock covered by those registration rights, for sale in an underwritten public offering. Pursuant to this request, in April 2007 we filed a registration statement for a public offering of 18,000,000 shares of common stock held by such funds. The registration statement also covered 2,700,000 shares that would be subject to an option to be granted to the underwriters by such funds solely to cover overallotments. On July 30, 2008, we applied to withdraw this registration statement and requested the SEC s consent thereto. Any sale of common stock into the public market could cause a decline in the trading price of our common stock.

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There may be an increase in the sales volume of our common stock when we are current in our Exchange Act filings, and any sales of shares into the public market may cause a decline in the trading price of our common stock.

On December 6, 2007, our board of directors approved the extension of the exercise periods of certain outstanding stock options that would otherwise likely expire prior to our becoming current in our Exchange Act -filings. When we were not current in those filings, we were unable, under applicable securities laws, to issue shares pursuant to exercises of options. Sales of shares upon exercise of those and other options, or sales of shares subsequent to lapse of forfeiture restrictions on restricted stock units, may cause increased selling pressure in the market for our stock, which has generally traded at volume levels substantially less than those prior to the delisting of our common stock from the NASDAQ Stock Market on February 19, 2008. Any sales of shares into the public market may cause a decline in the trading price of our common stock.

PART III

Item 11. Executive Compensation

Compensation Discussion and Analysis

This Compensation Discussion and Analysis provides information regarding our compensation programs and policies for our named executive officers or NEOs, who consist of:

- Mark Fusco, our President and Chief Executive Officer;
- Bradley T. Miller, who served as our Senior Vice President and Chief Financial Officer until February 2009;
- Antonio J. Pietri, our Executive Vice President, Field Operations;
- Manolis E. Kotzabasakis, our Senior Vice President, Sales and Strategy; and
- Frederic G. Hammond, our Senior Vice President, General Counsel and Secretary.

Objectives and Philosophy of Our Executive Compensation Program

We have a total compensation philosophy designed to provide compensation that is linked to performance, competitive with other companies in the markets in which we compete, that is perceived to be fair and equitable, and that can be sustained in all business environments. The compensation policies established by the compensation committee have been designed to link executive compensation to the attainment of specific performance goals and to align the interests of executive officers with those of our stockholders. The policies are also designed to allow us to attract and retain senior executives critical to our long-term success by providing competitive compensation packages and recognizing and rewarding individual contributions, to ensure that executive compensation is aligned with corporate strategies and business objectives, and to promote the achievement of key strategic and financial performance measures.

To achieve these objectives, we use a mix of compensation elements, including:

- base salary;
- annual performance-based and discretionary cash bonuses;
- long-term equity incentives in the form of stock options and restricted stock units;
- employee benefits; and
- severance and change-of-control benefits.

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In determining the amount and form of these compensation elements, we may consider a number of factors, including the following:

- compensation levels paid by companies in our peer group, with a particular focus on target levels for cash compensation based on cash compensation paid to similarly situated officers employed by the peer companies, as we believe this approach helps us to compete in hiring and retaining the best possible talent while at the same time maintaining a reasonable and responsible cost structure;

- corporate performance, particularly as reflected in achievement of key corporate strategic, financial and operational goals such as growth and penetration of customer base and financial and operational performance, as we believe this encourages our NEOs to focus on achieving our business objectives;

- the need to motivate executives to address particular business challenges unique to a particular year;

- internal pay equity of the compensation paid to one NEO as compared to another, as we believe this contributes to retention and a spirit of teamwork among our executives;

- broader economic conditions, in order to ensure that our pay strategies are effective yet responsible, particularly in the face of any unanticipated consequences of the broader economy on our business; and

- individual negotiations with NEOs, particularly in connection with their initial compensation package, as these executives may be leaving meaningful compensation opportunities at prior employers or may be declining significant compensation opportunities at other potential employers in order to come work for us, as well as negotiations upon their departures, as we recognize the benefit to our stockholders of seamless transitions.

Role of the Compensation Committee

The compensation committee of the board of directors oversees our executive compensation program. In this role, the compensation committee is generally responsible for reviewing, modifying, approving and otherwise overseeing the compensation policies and practices applicable to our employees, including the administration of our equity and employee benefit plans. As part of this responsibility, the compensation committee reviews and approves (or recommends for approval by a majority of the independent directors), the compensation structure for our NEOs. The board is responsible for establishing corporate objectives and targets for purposes of variable cash compensation; for fiscal 2009, the board approved the corporate operating income target for both of our cash bonus plans.

The compensation committee historically has, at its discretion, presented to the board information regarding executive compensation matters for all executives. Compensation matters for all executives other than the chief executive officer and the chief financial officer are approved by the compensation committee and presented to the board for informational purposes. The compensation committee presents to the board its recommendations on compensation matters for the chief executive officer and the chief financial officer, including base salary and target bonus levels, for approval by the independent directors. In fiscal 2009 the independent directors approved the compensation committee s recommendations as presented.

As part of its deliberations, in any given year, the compensation committee may review and consider materials such as our financial reports and projections, operational data, tax and accounting information that set forth the total compensation that may become payable to executives in various hypothetical scenarios, executive and director stock ownership information, our stock performance data, analyses of historical executive compensation levels and current company-wide compensation levels, industry and peer company benchmark data, and the recommendations of our chief executive officer. The compensation committee may review materials and advice provided by an independent compensation consultant, but did not engage any compensation consultants in determining or recommending the amount or form of executive compensation for fiscal 2009.

Role of Management

For NEOs other than our chief executive officer, the compensation committee solicits and considers the performance evaluations and compensation recommendations submitted to the compensation committee by the chief

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executive officer. In the case of the chief executive officer, the compensation committee evaluates his performance and determines whether to recommend to the board any adjustments to his compensation. Mark Fusco, our chief executive officer and one of our directors, participated in the meetings of the compensation committee related to the amount of the fiscal 2009 compensation packages for each of the NEOs, other than his own.

Our human resources, accounting and finance, and legal departments work with our chief executive officer to design and develop compensation programs applicable to NEOs and other senior executives that the chief executive officer recommends to the compensation committee. These departments also work with the chief executive officer to recommend changes to existing compensation programs, to recommend financial and other performance targets to be achieved under those programs, to prepare analyses of financial data, to prepare peer group data summaries, to prepare other compensation committee briefing materials, and ultimately to implement the decisions of the board and the compensation committee.

Compensation Benchmarking

The compensation committee reviews relevant market and industry practices on executive compensation to balance our need to compete for talent with our need to maintain a reasonable and responsible cost structure, as well as with the goal of aligning the interests of the NEOs with those of our stockholders. In making compensation decisions for fiscal 2009, the compensation committee reviewed information on practices, programs and compensation levels implemented by a peer group selected by the compensation committee and global industry survey sources.

Peer Group

The peer group consists of companies that are U.S. publicly traded software companies, that have revenue within a specified range of our revenue and that the compensation committee believes compete with us for executive talent. At the time the compensation committee reviewed peer group data for purposes of fiscal 2009, the peer group had annual revenues of between $235 million and $941 million. The composition of the peer group is reviewed and updated by the compensation committee annually, based in part on recommendations of our chief executive officer and chief financial officer. For fiscal 2009, the twelve companies included in the peer group were:

ANSYS, Inc.

Epicor Software Corporation

i2 Technologies, Inc.

Informatica Corporation

JDA Software Group, Inc.

Lawson Software, Inc.

Manhattan Associates, Inc.

Mentor Graphics Corporation

Parametric Technology Corporation

Progress Software Corporation

QAD Inc.

TIBCO Software Inc.

Compensation Positioning and Compensation Allocations

In general, the compensation committee sets cash compensation elements as follows, with compensation above this level possible for exceptional performance:

- base salaries at or near the 50th percentile for our peer group; and

- target cash bonus compensation at or near the 75th percentile for our peer group.

The compensation committee believes targeting each element of cash compensation at these percentiles for our peer group is necessary in order to achieve the primary objectives, described above, of our executive compensation program. The higher percentile for target cash bonuses is intended to highly motivate our executives to achieve the corporate financial and individual objectives that underlie our performance-based bonus plans.

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Benchmarking is not the only factor the compensation committee considers in setting either element of cash compensation. The equity compensation element is not benchmarked to a specific peer group percentile, although peer group data, including mean and distribution data for peer company officers, are analyzed and considered by the compensation committee in the process of determining compensation levels for NEOs. A number of other factors, such as economic conditions, performance and individual negotiations, may play an important role (or no role) with respect to the cash or equity compensation offered to any NEO in a given year. In setting actual compensation levels for a NEO, the compensation committee, in addition to considering peer group data, also considers the NEO s duties and responsibilities and the NEO s ability to influence corporate performance. In addition to peer group analysis, the compensation committee also reviews third-party survey data to confirm the reasonableness of proposed compensation levels. The compensation committee believes this general approach helps us to compete in hiring and retaining the best possible talent while at the same time maintaining a reasonable and responsible cost structure.

The compensation committee considers actual realized compensation received in determining if compensation programs are meeting their objectives. It does not, however, typically reduce compensation plan targets because of compensation realized from prior awards, in order to avoid creating an inadvertent disincentive for exceptional performance.

Reasons for Providing, and Manner of Structuring, the Key Compensation Elements in Fiscal 2009

Base Salary

We provide base salary as a fixed source of compensation for our executives, allowing them a degree of certainty in the face of having a large portion of their compensation at risk. Base salary is used to recognize the performance, skills, knowledge, experience and responsibilities required of all our employees, including our NEOs. The compensation committee recognizes the importance of base salary as an element of compensation that helps to attract and retain our executives. As a result, base salaries need to be at levels competitive with salaries provided by our peer group and target base salary levels are typically targeted at the 50th percentile of our peer group.

Each year the compensation committee reviews the annual salaries for each of our NEOs, considering whether existing base salary levels continue to be at the 50th percentile for our peer group and other factors such as peer group average salary data. In addition to considering the peer group data, the compensation committee may, but does not always, also consider other factors, including the experience, tenure and performance of a NEO, the scope of the NEO s responsibility, the salary level negotiated by a NEO in any existing employment agreement, broader economic conditions, our financial health, and the extent to which the compensation committee is generally satisfied with the NEO s past performance and expected future contributions.

For fiscal 2009, the compensation committee determined that the $500,000 base salary of Mark Fusco was at the 67th percentile, and 104% of average ($480,228), for chief executive officers of our peer group. Mr. Fusco s base salary exceeded the 50th percentile generally targeted for NEOs, in recognition of his individual role and responsibilities, his track record with us (including his past successes in addressing significant accounting and business challenges), and his importance to our future success.

The compensation committee also determined to recommend to the board that the $300,000 base salary of Bradley Miller be continued from fiscal 2008 into fiscal 2009, and the board approved that recommendation. Mr. Miller s base salary was at the 54th percentile for chief financial officers of our peer group. Mr. Miller stepped down from his position as our chief financial officer in February 2009; our current chief financial

officer, Mark P. Sullivan, did not join us until July 2009.

The base salary levels of the other three NEOs were increased, and the percentiles represented by the fiscal 2009 base salaries for similarly situated officers of our peer group, were:

- Antonio Pietri: base salary increased $25,000 to $300,000, at the 50th percentile;
- Manolis Kotzabasakis: base salary increased $15,000 to $265,000; and
- Frederic Hammond: base salary increased $25,000 to $275,000, below the 50th percentile.

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The compensation committee noted that the responsibilities of Mr. Kotzabasakis were different from those associated with any of the officers covered by the peer group data, and the compensation committee therefore relied on factors other than benchmarking, including third-party survey data and consideration of his significant contributions to our success, in setting a base salary for Mr. Kotzabasakis for fiscal 2009. The determinations of base salaries of the NEOs other than for Mr. Fusco were based in part on, and were consistent with, recommendations made by Mr. Fusco to the compensation committee.

Variable Cash Compensation

In addition to earning a base salary, executives are eligible to earn additional cash compensation through annual (that is, short-term) variable cash bonuses. The variable bonuses are intended to motivate executives to work at the highest levels of their individual abilities and to achieve company-wide operating and strategic objectives as well as individual objectives. The compensation committee also recognizes the important role that variable cash compensation plays in attracting and retaining executives and therefore generally seeks to set target levels for variable bonuses (that is, payouts for target performance achievement) so that target cash bonus compensation falls at or near the 75th percentile for target cash bonus compensation of similarly situated executives at our peer group. By weighting cash compensation more heavily toward variable cash compensation (since base salaries are targeted at the median), the compensation committee makes a significant portion of our executives total cash compensation at risk, helping us implement a culture in which the executives know that their take-home pay depends, to a large extent, on our and their performance.

The compensation committee generally starts the process of determining the target bonus levels, and the corporate and individual performance goals by which performance will be measured under the bonus programs, in the last quarter before the start of the applicable fiscal year. Typically, in the fourth quarter of each fiscal year, the compensation committee considers potential performance measures and the target bonus percentages for the next fiscal year. As part of this analysis, the compensation committee considers the likely bonus payouts for the ongoing fiscal year and reviews its preliminary analysis with the chief executive officer, in connection with their consideration of expected financial results for the prior year, budgets for the applicable year and the economic forecast for the applicable year. The compensation committee also considers peer group company data provided by the chief executive officer. The chief executive officer then makes a recommendation to the compensation committee as to the target bonuses that the other executives should be eligible to earn for the applicable year, and the compensation committee reviews those recommendations. Generally, in the first quarter of a fiscal year, after financial results for the prior year have become available, the compensation committee reviews and finalizes its earlier discussions regarding the structure and elements of compensation for the new year. Among other things, the board determines the corporate performance goals for the year and the compensation committee determines individual performance goals (other than goals for the chief executive officer and chief financial officer, which the compensation committee recommends to the board for approval).

In June 2008 the compensation committee approved two incentive bonus plans for our executives for fiscal 2009: the Executive Annual Incentive Bonus Plan Fiscal 2009, or 2009 Executive Plan; and the Operations Executives Plan Fiscal 2009, or 2009 Operations Plan. The participants in the 2009 Executive Plan consisted of our chief executive officer and those executives who report directly to our chief executive officer, except for executives who participate in the 2009 Operations Plan. The participants in the 2009 Operations Plan consisted of regional operations and global executives. Manolis Kotzabasakis participated in the 2009 Operations Plan, and each of the other NEOs participated in the 2009 Executive Plan. In September 2009, the compensation committee approved discretionary cash bonuses, based on individual performance during fiscal 2009, for employees who did not participate in the 2009 Operations Plan or any other commission-based plans.

The process of the compensation committee for establishing variable cash compensation for fiscal 2010 was completed in the first quarter of fiscal 2010, in accordance with the Company s standard practice. In September 2009 the compensation committee approved the Executive Annual Incentive Bonus Plan Fiscal 2010, or 2010 Executive Plan, an incentive bonus plan for our executives for fiscal 2010. The participants in the 2010 Executive Plan include our chief executive officer and those executives who report directly to our chief executive officer.

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2009 Executive Plan

The participants in the 2009 Executive Plan included each of the NEOs other than Manolis Kotzabasakis. Any amounts earned under the 2009 Executive Plan were payable in cash and directly tied to achievement of corporate financial targets and individual performance goals. Amounts payable under the 2009 Executive Plan were based and weighted as follows:

- 70% of the overall bonus was based on our corporate achievement of operating margin;

- 25% of the overall bonus was based on satisfaction of individual performance objectives; and

- 5% of the overall bonus was based on a subjective performance assessment by the chief executive officer or, in the case of the chief executive officer, by the compensation committee.

We do not have a general policy regarding the adjustment of compensation following a restatement or adjustment of our performance measures.

In connection with the 2009 Executive Plan, the board selected operating income as the primary corporate performance goal for fiscal 2009. Operating income was calculated as income from operations less restructuring charges, extraordinary legal costs, and gains or losses on sales and disposals of assets. The board chose this goal because it expected that operating income would be the best indicator of the achievement of the execution of our operating plan in fiscal 2009 and would be important to increasing the value of our common stock, therefore aligning the financial interests of executives with those of our stockholders. The 2009 Executive Plan included a minimum operating income threshold of $75.0 million, which represented 80% of our targeted operating income of $93.8 million from the operating plan adopted by our board of directors. If this minimum threshold was not met, no bonus would be payable under the 2009 Executive Plan. If operating income exceeded $75.0 million, the amount of bonuses would increase as operating income increased, up to a maximum operating income threshold of $140.7 million, which represented 150% of targeted operating income.

Individual performance goals of executives under the 2009 Executive Plan were tied to the executive s particular functional responsibilities and his performance in fulfilling those responsibilities. The bonus amount attributable to individual goals was capped at 100% achievement. The compensation committee established individual performance goals for Mark Fusco, and Mr. Fusco, as chief executive officer, developed individual goals for the three other NEOs covered by the 2009 Executive Plan, subject to the compensation committee s review and approval. The compensation committee discussed all of the executives individual performance goals with the board and then approved the individual goals for each executive under the 2009 Executive Plan, other than goals for the chief executive officer and chief financial officer, which were approved by the board.

Target bonus amounts for individual executives under the 2009 Executive Plan generally are targeted at the 75th percentile of our peer group. The target bonus amounts for the four NEOs covered by the 2009 Executive Plan, and the percentile represented by the fiscal 2009 target bonuses for similarly situated officers of our peer group:

- Mark Fusco: $700,000, above the 90th percentile;

- Bradley Miller: $175,000, below the 50th percentile;

- Antonio Pietri: $275,000, slightly above the 75th percentile; and

- Frederic Hammond: $140,000, below the 50th percentile.

In establishing Mr. Fusco s target bonus, the compensation committee considered not only peer group data but also certain subjective, qualitative and intangible factors, including his leadership and his vision for our company, which the compensation committee believes are critical to our success. The determinations of the target bonus amounts of Messrs. Miller, Pietri and Hammond were based in part on, and were consistent with, recommendations made by Mr. Fusco to the compensation committee.

The threshold level for being awarded a bonus pursuant to the 2009 Executive Plan can be characterized as challenging, while the maximum goal contemplates compliance with demanding requirements. The minimum

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operating income threshold and other operating income requirements under the 2009 Executive Plan were based on our operating plan for fiscal 2009, which anticipated double-digit growth in license revenues from fiscal 2008. We view that organic growth rate as very challenging for a company that has been operating for thirty years. We paid bonuses with respect to fiscal 2007 and fiscal 2008 under variable cash compensation plans predicated on a similar rate of growth in license revenue. In both of those years, however, we recognized record levels of revenue, and payment of bonuses under the 2009 Executive Plan would have required another record amount of revenue in the face of challenging economic conditions.

Following the close of fiscal 2009, the compensation committee determined that no bonuses were payable under the 2009 Executive Plan because operating income of $43.9 million did not meet the minimum operating income threshold. In September 2009, the compensation committee approved discretionary cash bonuses to certain individuals as described below under 2009 Discretionary Cash Bonus Awards.

2009 Operations Plan

Manolis Kotzabasakis is the only NEO who participated in the 2009 Operations Plan. Any amounts earned under the 2009 Operations Plan were payable in cash and directly tied to achievement of corporate financial targets and regional performance objectives. Amounts payable to Mr. Kotzabasakis under the 2009 Operations Plan were based and weighted as follows:

- 75% of the overall bonus consisted of a commission element;
- 20% of the overall bonus was based on our corporate achievement of operating margin; and
- 5% of the overall bonus was based on satisfaction of individual performance objectives.

We do not have a general policy regarding the adjustment of compensation following a restatement or adjustment of our performance measures.

The commission element for Mr. Kotzabasakis under the 2009 Operations Plan is based on regional operating and contribution margins. Overachievement under this element was capped at 150% Bonuses attributable to the regional performance component were paid as quarterly commissions based on quarterly regional or consolidated financial results.

As described above under 2009 Executive Plan, the compensation committee believed operating income would be the best indicator of the achievement of the execution of our operating plan in fiscal 2009 and would be important to increasing the value of our common stock, therefore aligning the financial interests of 2009 Operations Plan participants with those of our stockholders. The 2009 Operations Plan included a minimum operating income threshold of $75.0 million, which represented 80% of our targeted operating income of $93.8 million from the operating plan adopted by our board of directors. If this minimum threshold was not met, no bonus would be payable under operating margin

individual performance goals elements of the 2009 Operations Plan. If operating income exceeded $75.0 million, the amount of bonuses would increase as operating income increased, up to a maximum operating income threshold of $140.7 million, which represented 150% of targeted operating income.

Individual performance goals of Mr. Kotzabasakis under the 2009 Operations Plan were tied to his particular functional responsibilities and his performance in fulfilling those responsibilities. The bonus amount attributable to individual goals was capped at 100% achievement. The individual performance goals for Mr. Kotzabasakis were developed by Mr. Fusco, as chief executive officer, subject to the compensation committee s review and approval. The compensation committee discussed the individual performance goals with the board and then approved the individual goals under the 2009 Operations Plan.

The target bonus amount for Mr. Kotzabasakis under the 2009 Operations Plan was $260,000. While the compensation committee generally establishes NEOs target bonuses at the 75th percentile of our peer group, the compensation committee noted that the responsibilities of Mr. Kotzabasakis were different from those associated with any of the officers covered by the peer group data and the compensation committee therefore relied more heavily on factors other than benchmarking, including third-party survey data, in setting a total target bonus for Mr. Kotzabasakis for fiscal 2009.

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The threshold level for being awarded a bonus pursuant to the 2009 Operations Plan can be characterized as challenging, while the maximum goal contemplates compliance with demanding requirements. The minimum operating income threshold and other operating income requirements under the 2009 Operations Plan were based on our operating plan for fiscal 2009, which anticipated double-digit growth in license revenues from fiscal 2008. We view that organic growth rate as very challenging for a company that has been operating for thirty years. We paid bonuses with respect to fiscal 2007 and fiscal 2008 under variable cash compensation plans predicated on a similar rate of growth in license revenue. In both of those years, however, we recognized record levels of revenue, and payment of bonuses under the 2009 Operations Plan would have required another record amount of revenue in the face of challenging economic conditions.

Mr. Kotzabasakis received payments totaling $130,964 under the commission element of the 2009 Operations Plan, which payments represented 67% of his total commission target of $195,000 (75% of $260,000). Neither he nor any other participant received any payments under the operating margin and individual performance elements of the 2009 Executive Plan because the minimum operating income threshold was not satisfied.

2009 Discretionary Cash Bonus Awards

The board of directors and the compensation committee retain discretion to award bonuses outside of the annual bonus program parameters.

Following the determination that no bonus amounts were payable under the 2009 Executive Plan, the compensation committee met in July, August and September 2009 to review the key developments that resulted in our failing to meet the minimum operating income threshold under the 2009 Executive Plan and the 2009 Operations Plan, as well as the identical threshold applicable to our corporate bonus plan for non-executive employees.

The compensation committee reviewed the fiscal 2009 operating results and observed that a number of key corporate objectives had been achieved during the year, including a significant increase in license bookings, the management and control of expense levels, and the satisfaction of 97% of our target cash plan. The compensation committee concluded that operating income had been adversely affected for reasons outside the control of our executives and staff, including revenue recognition timing issues and the unanticipated global economic downturn. The compensation committee also considered the fact that we did not grant fiscal 2010 merit increases and that, at the time, we were unable (and had been unable since fiscal 2008) to grant equity incentive awards because we were not current in filing periodic reports with the SEC.

Based upon a recommendation of Mark Fusco, our President and Chief Executive Officer, the compensation committee determined to recommend to the board that we grant a broad-based discretionary bonus based on fiscal 2009 performance. In accordance with that recommendation, the discretionary bonus did not cover Mr. Fusco or any individuals, such as Manolis Kotzabasakis, who participated in the 2009 Operations Plan and therefore were eligible for quarterly commission payments. The compensation committee separately determined that Mr. Fusco should be eligible for a discretionary payment, based on his contributions during fiscal 2009. The amount of the discretionary cash bonus payable to each eligible individual generally was established at 50% of the individual s total target bonus under the 2009 Executive Plan or our corporate bonus plan, as applicable. In September 2009, the board approved the discretionary cash bonus awards recommended by the compensation committee.

Following board approval, discretionary bonus awards were paid to three NEOs. Mark Fusco received a payment of $350,000 and Frederic Hammond received a payment of $70,000. Each of these discretionary payments represented 50% of the recipient s total target bonus under the 2009 Executive Plan.

Antonio Pietri received a discretionary bonus award of $192,500, which represented 70% of his target bonus under the 2009 Executive Plan. The compensation committee established Mr. Pietri s discretionary bonus at this level for purposes of internal compensation equity, in order to align his compensation with other executives having similar levels of responsibility and to position him appropriately with respect to the commission-earning individuals who report to him.

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2010 Executive Plan

The participants in the 2010 Executive Plan include Mark Fusco, Antonio Pietri, Manolis Kotzabasakis and Frederic Hammond. Any amounts earned under the 2010 Executive Plan are payable in cash and directly tied to achievement of corporate financial targets and individual performance goals. Amounts payable under the 2010 Executive Plan are based and weighted as follows:

- 65% of the overall bonus is based on our corporate achievement of target global license bookings; and

- 35% of the overall bonus is based on our corporate achievement of target operating cash flow.

In connection with the 2010 Executive Plan, the board selected global license bookings and operating cash flows as the primary corporate performance goals for fiscal 2010. The board chose these goals because it expects that, particularly in light of the implementation of our new licensing model, those two goals will be the best indicators of the achievement of the execution of our operating plan in fiscal 2010 and will be important to increasing the value of our common stock, therefore aligning the financial interests of executives with those of our stockholders. The goals are based upon targets approved by the board as part of our fiscal 2010 operating plan. In order for any bonus to be payable to any executive under either the global license bookings or operating cash flow metric, we must achieve at least 70% of the target metric. Each metric is measured and funded independently.

An executive must achieve individual performance objectives established in connection with the 2010 Executive Plan. The compensation committee established, and will assess compliance with, individual performance goals for Mark Fusco, and Mr. Fusco, as chief executive officer, developed, and will assess compliance with, individual goals for the three other NEOs covered by the 2010 Executive Plan, subject to the compensation committee s review. The compensation committee approved the individual performance goals for Antonio Pietri, Manolis Kotzabasakis and Frederic Hammond, and recommended to the board approval of the goals for Mr. Fusco and Mark Sullivan. The board subsequently approved the individual performance goals for each of Messrs. Fusco and Sullivan. Under the 2010 Executive Plan, each executive will receive a performance achievement rating between 80% and 100%, which will be used as a multiplier against the funded level of each financial metric to determine a final earned bonus under each financial metric. As part of the negotiations of initial compensation for Mr. Sullivan when he joined us in July 2009, the compensation committee agreed that payment of his target bonus would be guaranteed for 2010.

In fiscal 2010, performance will be evaluated at mid-year and at year-end, and the bonus will be allocated 25% to mid-year and 75% to year-end. The year-end calculation will also be weighted by the individual performance assessment rating.

No award will be payable to an executive under the plan if the executive s employment terminates prior to the payment date under the plan; provided that in the event the executive s employment terminates due to death, incapacity or retirement, then any award payable will be prorated.

In addition to awards based on the performance metrics established in the plan, the compensation committee may make discretionary awards to eligible employees in such amounts as the committee determines are appropriate and in our best interests.

Equity Compensation

We provide a portion of our executive compensation in the form of stock options and restricted stock units that vest over time, which we believe helps to retain our executives and aligns their interests with those of our stockholders by allowing the executives to participate in our longer-term success through stock price appreciation.

Our equity award program is the primary vehicle for offering long-term incentives to our executives. We believe that equity grants help to align the interests of our executives and our stockholders, provide our executives with a strong link to our long-term performance and create an ownership culture. In addition, the vesting feature of our equity grants should further our goal of executive retention by providing an incentive to an executive to remain in our employ during the vesting period. In determining the size of equity grants to our executives, our compensation committee considers comparative share ownership of executives in our compensation peer group, our

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company-level performance, the individual executive s performance, the amount of equity previously awarded to the executive, the vesting status of the previous awards and the recommendations of the chief executive officer. We do not have any equity ownership guidelines for our executives.

We typically make an initial equity award of stock options and/or restricted stock units to new executives and an annual equity program grant as part of our overall compensation program. All grants of options and restricted stock units to our executives are approved by the compensation committee.

Our equity awards typically have taken the form of stock options and restricted stock units. The compensation committee reviews all components of an executive s compensation when determining annual equity awards to ensure that the executive s total compensation conforms to our overall philosophy and objectives.

We set the exercise price of all stock option grants to equal the prior day s closing price of our common stock. Typically, the stock options we grant to our executives vest pro rata over the first sixteen quarters of a ten-year option term. Vesting and exercise rights cease shortly after termination of employment except in the case of death or disability. Prior to the exercise of an option, the holder has no rights as a stockholder with respect to the shares subject to such option, including voting rights and the right to receive dividends or dividend equivalents.

We became delinquent in our SEC filings in fiscal 2008 and remained delinquent throughout fiscal 2009 because of certain accounting errors we had identified. Our failure to timely file reports under the Exchange Act resulted in lack of an effective registration statement, so we suspended option grants until we became current.

Benefits and Other Compensation

We maintain broad-based benefits that are provided to all employees, including health and dental insurance, life and disability insurance and a 401(k) plan. Executives are eligible to participate in all of our employee benefit plans, in each case on the same basis as other employees. Our NEOs are not entitled to benefits that are not otherwise available to all employees.

Severance and Change-in-Control Benefits

Pursuant to executive retention agreements we have entered into with each of our NEOs as of June 30, 2009 and to the provisions of our option agreements, those executives are entitled to specified benefits in the event of the termination of their employment under specified circumstances, including termination following a change in control of our company. We have provided more detailed information about these benefits, along with estimates of value under various circumstances, in the table below under Potential Payments Upon Termination or Change in Control.

We believe these agreements assist in maintaining a competitive position in terms of attracting and retaining key executives. The agreements also support decision-making that is in the best interests of our stockholders, and enable our executives to focus on company priorities. We believe that our severance and change in control benefits are generally in line with prevalent peer practice with respect to severance packages offered to executives.

Except with respect to our chief executive officer, our practice in the case of change-of-control benefits under the executive retention agreements has been to structure these as double trigger benefits. In other words, the change in control does not itself trigger benefits; rather, benefits are paid only if the employment of the executive is terminated under the circumstances described below during a specified period after the change in control. We believe a double trigger benefit maximizes shareholder value because it prevents an unintended windfall to executives in the event of a friendly change in control, while still providing them appropriate incentives to cooperate in negotiating any change in control in which they believe they may lose their jobs.

Tax and Accounting Considerations

Section 162(m) of the Internal Revenue Code of 1986, or IRC, generally disallows a tax deduction to a publicly traded company for certain compensation in excess of $1,000,000 paid to the chief executive officer and the four other most highly compensated executive officers. Qualifying performance-based compensation is not subject to the deduction limitation if specified requirements are met.

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We periodically review the potential consequences of Section 162(m), and we generally intend to structure the performance-based portion of our executive compensation, where feasible, to comply with exemptions in Section 162(m) so that the compensation remains tax-deductible to us. The compensation committee in its judgment may, however, authorize compensation payments that do not comply with the exemptions in Section 162(m) when it believes that such payments are appropriate to attract and retain executive talent.

Conclusion

Through the compensation arrangements described above, a significant portion of each executive s compensation is contingent on our performance. Therefore, the realization of benefits by the executive is closely linked to our achievements and increases in stockholder value. We remain committed to this philosophy of paying for performance, recognizing that the competitive market for talented executives and the volatility of our business may result in highly variable compensation in any particular time period. The compensation committee gives careful consideration to our executive compensation program, including each element of compensation for each executive. The compensation committee believes the executive compensation program is reasonable in light of the programs available at the peer group. The compensation committee also believes that the compensation program gives each executive appropriate incentives, based on the executive s responsibilities, achievements and ability to contribute to our performance. Finally, the compensation committee firmly believes that our compensation structure and practices encourages management to work for real innovation, business improvements and outstanding stockholder returns, without taking unnecessary or excessive risks.

Risk Analysis of Compensation Plans

The compensation committee has reviewed the compensation policies as generally applicable to our employees, and believes that these policies do not encourage excessive and unnecessary risk-taking and that the level of risk that they do encourage is not reasonably likely to have a material adverse effect on our company. The design of the compensation policies and programs encourages employees to remain focused on both our short- and long-term goals. For example, while the cash bonus plan measure performance on an annual basis, the equity awards typically vest over a number of years, which we believe encourages employees to focus on sustained stock price appreciation, thus limiting the potential for excessive risk-taking.

Compensation Committee Report

The compensation committee of the board of directors has reviewed and discussed with management the foregoing Compensation Discussion and Analysis. Based on this review and discussion, the compensation committee has recommended to the board, and the board has agreed, that the section entitled Compensation Discussion and Analysis as it appears above, be included in this Form 10-K/A.

COMPENSATION COMMITTEE

Donald P. Casey
Stephen M. Jennings

Potential Payments Upon Termination or Change in Control

On December 7, 2004, we entered into an employment agreement with Mark E. Fusco, pursuant to which Mr. Fusco agreed to serve as our President and Chief Executive Officer. Under this agreement, in the event of termination of Mr. Fusco s employment (other than for the reasons set forth below), including termination of his employment after a change in control (as defined below) or termination of employment by Mr. Fusco for good reason (which includes constructive termination, relocation, or reduction in salary or benefits), Mr. Fusco will be entitled to a lump sum severance payment equal to two times the sum of:

- the amount of Mr. Fusco s annual base salary in effect immediately prior to notice of termination (or in the event of termination after a change in control, then the amount of his annual base salary in effect immediately prior to the change in control, if higher); and

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- the amount of the average of the annual bonuses paid to Mr. Fusco for the three years (or the number of years employed, if less) immediately preceding the notice of termination (or in the event of termination after a change in control, then the amount of the average annual bonuses paid to Mr. Fusco for the three years (or the number of years employed, if less) immediately prior to the change in control, if higher) or the occurrence of a change in control, as the case may be.

In addition, in lieu of any further life, disability, and accident insurance benefits otherwise due to Mr. Fusco following his termination (other than for the reasons set forth below), including termination after a change in control, we will pay Mr. Fusco a lump sum amount equal to the estimated cost (as determined in good faith by us) to Mr. Fusco of providing such benefits, to the extent that Mr. Fusco is eligible to receive such benefits immediately prior to notice of termination, for a period of two years commencing on the date of termination. We will also pay all health insurance due to Mr. Fusco for a period of two years commencing on the date of termination.

Mr. Fusco s employment agreement provides that the payments received by him relating to termination of his employment will be increased in the event that these payments would subject him to excise tax as a parachute payment under IRC Section 4999. The increase would be equal to an amount necessary for Mr. Fusco to receive, after payment of such tax, cash in an amount equal to the amount he would have received in the absence of such tax. However, the increased payment will not be made if the total severance payment, if so increased, would not exceed 110% of the highest amount that could be paid without causing an imposition of the excise tax. In that event, in lieu of an increased payment, the total severance payment will be reduced to such reduced amount. We have indemnified Mr. Fusco for the amount of any penalty applicable to any payments Mr. Fusco receives from us as a result of his termination that are imposed by IRC Section 409A.

However, in the event that Mr. Fusco s employment is terminated for one or more of the following reasons, then Mr. Fusco will not be entitled to the severance payments described above:

- by us for cause (as defined below);

- by reason of Mr. Fusco s death or disability;

- by Mr. Fusco without good reason (unless such resignation occurs within six months following a change in control); or

- after Mr. Fusco shall have attained age 70.

Under the terms of Mr. Fusco s employment agreement, in the event of a potential change in control (as defined below), Mr. Fusco agrees to remain in our employment until the earliest of:

- three months after the date of such potential change in control;

- the date of a change in control;

- the date of termination by Mr. Fusco of his employment for good reason or by reason of death or retirement; and

- our termination of Mr. Fusco s employment for any reason.

For the purposes of Mr. Fusco s employment agreement, cause for our terminating Mr. Fusco means:

- the willful and continued failure by Mr. Fusco to substantially perform his duties after written demand by the board;

- willful engagement by Mr. Fusco in gross misconduct materially injurious to us; or

- a plea by Mr. Fusco of guilty or no contest to a felony charge.

For the purposes of Mr. Fusco s employment agreement, a change in control is deemed to have occurred if any of the following conditions shall have been satisfied:

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- continuing directors cease to constitute more than two-thirds of the membership of the board;

- any person or entity acquires, directly or indirectly, beneficial ownership of 50% or more of the combined voting power of our then-outstanding voting securities;

- a change in control occurs of a nature that we would be required to report on a current report on Form 8-K or pursuant to Item 6(e) of Schedule 14A of Regulation 14A or any similar item, schedule or form under the Exchange Act, as in effect at the time of the change, whether or not we are then subject to such reporting requirement, including our merger or consolidation with any other corporation, other than:

- a merger or consolidation where (1) our voting securities outstanding immediately prior to such transaction continue to represent 51% or more of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such transaction, and (2) our directors immediately prior to such merger or consolidation continue to constitute more than two-thirds of the membership of the board of directors of the surviving or combined entity following such transaction; or

- a merger or consolidation effected to implement our recapitalization (or similar transaction) in which no person or entity acquires 25% or more of the combined voting power of our then outstanding securities; or

- our stockholders approve a plan of complete liquidation or an agreement for the sale or disposition of all or substantially all of our assets (or any transaction having a similar effect).

For the purposes of Mr. Fusco s employment agreement, a potential change in control is deemed to have occurred if any of the following conditions shall have been satisfied:

- we enter into an agreement, the consummation of which would result in the occurrence of a change in control;

- we or anyone else publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a change in control;

- any person or entity becomes the beneficial owner, directly or indirectly, of 15% or more of the combined voting power of our then-outstanding securities (entitled to vote generally for the election of directors); or

- the board adopts a resolution to the effect that, for purposes of Mr. Fusco s employment agreement, a potential change in control has occurred.

On October 28, 2005, we entered into an amendment to our employment agreement with Mr. Fusco. This amendment provides that in the event Mr. Fusco becomes entitled, on the terms and conditions set forth in the employment agreement, to receive a severance payment upon termination of his employment, such a payment must be made within 30 days after the Date of Termination (as defined in the employment agreement). Notwithstanding the foregoing, if the severance payment will constitute nonqualified deferred compensation subject to the provisions of IRC Section 409A, then the payment instead will be due within 15 days after the earlier of (i) the expiration of six months and one day following the Date of Termination or (ii) Mr. Fusco s death following the Date of Termination. Mr. Fusco s agreement was amended and restated on October 3, 2007 to comply with the applicable provisions of IRC Section 409A.

On September 26, 2006, we entered into executive retention agreements with the following executive officers: Bradley T. Miller, our Senior Vice President and Chief Financial Officer; Antonio J. Pietri, our Executive Vice President of Field Operations; Manolis E. Kotzabasakis, our Senior Vice President, Sales and Strategy; and Frederic G. Hammond, our Senior Vice President, General Counsel, and Secretary. We refer to each of those officers as a specified executive.

Pursuant to the terms of each executive retention agreement, if the specified executive s employment is terminated prior to a change in control without cause, the specified executive will be entitled to the following:

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- payment of an amount equal to the specified executive s annual base salary then in effect, payable over twelve months;

- payment of an amount equal to the specified executive s total target bonus for the fiscal year, pro-rated for the portion of the fiscal year elapsed prior to termination, payable in one lump sum;

- payment of an amount equal to the cost to the specified executive of providing life, disability and accident insurance benefits, payable in one lump sum, for a period of one year; and

- continuation of medical, dental and vision insurance coverage to which the specified executive was entitled prior to termination for a period of one year.

In the event the specified executive s employment is terminated without cause within twelve months following a change in control or by the specified executive for good reason (which includes constructive termination, relocation, a reduction in salary or benefits, or our breach of any employment agreement with the specified executive or a failure to pay benefits when due), then the specified executive shall be entitled to the following:

- ONT SIZE="1"> $30,000 $945,000 $26,409 $1,501,409

Vice President and COO

2009 $500,000 $220,000 $824,250 $35,328 $1,579,578

(1) Represents base salary rate for the applicable year, prorated for any approved changes in base salary during the applicable year. Previously reported base salary amounts for 2009 have been conformed to reflect this method of presentation.

(2) Except as otherwise indicated in the footnotes below, represents the portion of the annual cash bonus awards to our named executive officers in recognition of their individual performance for the applicable year.

(3) Represents the portion of the annual cash bonus awards to our named executive officers in recognition of our corporate performance for the applicable year.

(4) Represents the grant date fair value of restricted stock awards and deferred stock units granted to our named executive officers in 2011, 2010 or 2009, computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 718, Stock Compensation. For information regarding assumptions made in connection with this valuation, please see Note 12 to our

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consolidated financial statements found in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

The amount shown for Mr. Berger s stock awards for 2011 includes $310,100, representing the grant date fair value of deferred stock units issued to him during 2011, adjusted for our assessment of the probability that the performance conditions to which the award was subject would be achieved. Mr. Berger was awarded 35,000 target units, with the opportunity to earn between zero and 131,250 units based on the Company s achievement of performance measures for our Muve Music service for fiscal years 2011 and 2012 and Mr. Berger s continued service to us. The full grant date fair value of the award assuming the highest level of performance was $646,843.

(5) Represents the grant date fair value for 2011, 2010 or 2009 of options to purchase Leap common stock granted to our named executive officers, computed in accordance with FASB ASC Topic 718, Stock Compensation. For information regarding assumptions made in connection with this valuation, please see Note 12 to our consolidated financial statements found in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

(6) Includes the other compensation set forth in the table below:

Name	Year	Matching 401(k) Contributions	Executive Benefits Payments	Financial Planning Services	Housing and Other Living Expenses	Sick Leave/Vacation Payout	Consulting Fees	Total Other Compensation
S. Douglas Hutcheson	2011	$ 7,350	$ 21,567	$ 23,687		$ 34,615		$ 87,219
	2010	$ 8,250	$ 9,541	$ 30,424		$ 23,077		$ 71,292
	2009	$ 7,350	$ 17,860	$ 11,845		$ 25,961		$ 63,016
Walter Z. Berger	2011	$ 7,350	$ 30,004	$ 49,513		$ 12,231		$ 99,098
	2010	$ 8,250	$ 30,005			$ 10,192		$ 48,447
	2009	$ 4,491	$ 8,978	$ 36,788		$ 10,192		$ 60,449
Raymond J. Roman	2011	$ 7,096	$ 1,777	$ 23,535		$ 9,773		$ 42,181
Robert A. Young	2011	$ 4,162	$ 2,285	$ 24,147		$ 9,808		$ 40,402
William D. Ingram	2011	$ 7,095	$ 7,366			$ 6,922		$ 21,383
	2010	$ 4,984	$ 9,010	$ 9,735		$ 5,769		$ 29,498
	2009	$ 5,020	$ 3,043	$ 4,625		$ 4,615		$ 17,303
Albin F. Moschner	2011	$ 1,442	$ 1,065			$	$ 797,243	$ 799,750
	2010	$ 8,250	$ 4,210		$ 4,334	$ 9,615		$ 26,409
	2009	$ 7,350	$ 7,971		$ 10,392	$ 9,615		$ 35,328

The Company s policy is for its employees to use commercial airline travel to the greatest possible extent. To the extent that an employee s spouse were to accompany him or her on any flight, the employee would pay for the costs of any such companion travel. In certain limited instances, circumstances have required the Company s officers to use chartered airline travel. Mr. Moschner s spouse accompanied him on one chartered business flight in 2009. Because the flight was directly related to the performance of his duties and his spouse used an unoccupied seat on the flight, we did not incur any incremental cost in connection with his travel and did not report any compensation related to the flight.

(7) Mr. Berger resigned as our executive vice president and CFO, effective February 29, 2012. Each of Mr. Berger s bonus amounts for 2011, 2010 and 2009 includes a $50,000 retention bonus we agreed to pay him upon the completion of each of his first, second and third years of employment.

(8) Mr. Roman joined us as our executive vice president and COO in February 2011 and his compensation for 2011 is for the partial year. Mr. Roman s bonus for 2011 includes a sign-on bonus of $300,000 and a payment of $83,020 consisting of a relocation bonus and

reimbursement of relocation expenses.

(9) Mr. Young joined us as our executive vice president, field operations in January 2011.

(10) Mr. Ingram s bonus amounts for 2011, 2011 and 2009 include retention bonuses of $35,000, $25,000 and $25,000 we agreed to pay him upon the completion of each of his first, second and third years of employment, respectively.

(11) Mr. Moschner retired as our executive vice president and COO, effective January 31, 2011. His bonus amount for 2010 represents a discretionary bonus paid to him in February 2010 in recognition of his contributions to the Company as its then-current COO and in lieu of an increase to his annual base salary.

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2011 Grants of Plan-Based Awards

The following table sets forth certain information with respect to non-equity and equity incentive plan awards granted during the fiscal year ended December 31, 2011 to the named executive officers.

			Estimated Future Payouts Under Non-Equity Incentive Plan Awards(2)			Estimated Future Payouts Under Equity Incentive Plan Awards(3)			All Other Stock Awards: Number of Shares of Stock or Units (#)(4)	All Other Option Awards: Number of Securities Underlying Options (#)(5)	Exercise or Base Price of Option Awards ($/Sh)	Closing Market Price on Grant Date ($/Sh)	Grant Date Fair Value of Stock and Option Awards ($)(6)
Name	Grant Date	Approval Date(1)	Threshold	Target	Maximum	Threshold	Target	Maximum					
S. Douglas Hutcheson													
Annual cash bonus award			$ 281,250	$ 562,500	$ 1,125,000								
Restricted stock award	11/02/2011	09/28/2011							50,000			$ 8.09	$ 404,500
Stock options	11/02/2011	09/28/2011								83,375	$ 8.09	$ 8.09	$ 397,023
	11/02/2011	09/28/2011								41,688	$ 12.00	$ 8.09	$ 170,508
	11/02/2011	09/28/2011								41,688	$ 15.00	$ 8.09	$ 154,367
Walter Z. Berger													
Annual cash bonus award			$ 159,000	$ 318,000	$ 636,000								
Deferred stock units	11/02/2011	09/28/2011				17,500	35,000	131,250				$ 8.09	$ 646,843
Restricted stock award	11/02/2011	09/28/2011							24,000			$ 8.09	$ 194,160
Stock options	11/02/2011	09/28/2011								60,000	$ 8.09	$ 8.09	$ 285,714
Raymond J. Roman													
Annual cash bonus award			$ 150,986	$ 301,973	$ 603,945								
Restricted stock awards	02/14/2011	01/20/2011							75,000			$ 13.96	$ 1,047,000
	02/14/2011	01/20/2011							80,000(7)			$ 13.96	$ 1,116,800
Stock options	02/14/2011	01/20/2011								100,000	$ 13.96	$ 13.96	$ 794,960
	02/14/2011	01/20/2011								20,000(7)	$ 13.96	$ 13.96	$ 159,822
Robert A. Young													
Annual cash bonus award			$ 127,500	$ 255,000	$ 510,000								

Restricted stock awards	02/14/2011	01/20/2011					50,000(8)			$ 13.96	$ 698,000
	02/14/2011	01/20/2011					50,000(9)			$ 13.96	$ 698,000
Stock options	02/14/2011	01/20/2011						50,000(8)	$ 13.96	$ 13.96	$ 397,480
	02/14/2011	01/20/2011						50,000(9)	$ 13.96	$ 13.96	$ 399,500
William D. Ingram											
Annual cash bonus award			$ 73,119	$ 146,237	$ 292,475						
Restricted stock award	11/02/2011	09/28/2011					14,000			$ 8.09	$ 113,260
Stock options	11/02/2011	09/28/2011						35,000	$ 8.09	$ 8.09	$ 166,667

(1) The equity awards were approved by the Compensation Committee on the dates indicated above and granted on the grant dates listed above pursuant to our equity grant guidelines.

(2) Represents the portion of the annual cash bonus awards eligible to be earned by our named executive officers in recognition of our corporate performance for 2011, which is payable pursuant to the Company s Executive Bonus Plan.

(3) Represents deferred stock units issued to Mr. Berger pursuant to the Company s 2004 Plan. Each unit represented the right to receive one share of Leap common stock upon vesting and settlement of such unit, subject to our achievement of performance measures for our Muve Music service for fiscal years 2011 and 2012. Mr. Berger resigned as our executive vice president and CFO in February 2012 and the deferred stock units expired.

(4) Represents restricted stock awards issued pursuant to the Company s 2004 Plan. Except as otherwise indicated, the restricted stock awards vest in 20% increments on the first, second and third anniversaries of the date of grant and 40% on the fourth anniversary of the date of grant. Each award is also subject to certain accelerated vesting upon a termination of the named executive officer s employment by us without cause or by the executive for good reason within 90 days prior to or 12 months following a change in control, as described under Severance, Retention and Change-in-Control Arrangements Change-in-Control Vesting of Stock Options and Restricted Stock below.

With respect to the restricted stock awards granted to Messrs. Hutcheson, Berger and Ingram, in order for an installment of shares to vest on the dates described above, the average of the closing prices of Leap common stock for the prior 30-calendar day period must be greater than $8.09, the closing price of Leap common stock on November 2, 2011, the date on which the award was originally granted; otherwise, the installment

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of shares will remain unvested until the average of the closing prices of Leap common stock for any subsequent 30-calendar day period is greater than such amount.

(5) Represents options to purchase shares of Leap common stock issued pursuant to the Company s 2004 Plan. Except as otherwise indicated, the stock options vest in equal annual installments on the first, second, third and fourth anniversaries of the date of grant. Each award is also subject to certain accelerated vesting upon a termination of the named executive officer s employment by us without cause or by the executive for good reason within 90 days prior to or 12 months following a change in control, as described under Severance, Retention and Change-in-Control Arrangements Change-in-Control Vesting of Stock Options and Restricted Stock below.

(6) Represents the grant date fair value of each individual equity award (on a grant-by-grant basis) as computed in accordance with FASB ASC Topic 718, Stock Compensation. For information regarding assumptions made in connection with this valuation, please see Note 12 to our consolidated financial statements found in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011. With respect to the deferred stock units granted to Mr. Berger, the amount represents the full grant date fair value of such award without adjusting for the probability of achieving the performance conditions applicable to the award.

(7) These grants of restricted stock and stock options made to Mr. Roman vest in full on the fourth anniversary of the grant date, with no interim installment vesting.

(8) These grants of restricted stock and stock options made to Mr. Young vest in equal annual installments on December 31, 2011, 2012, 2013 and 2014.

(9) These grants of restricted stock and stock options made to Mr. Young vest in full on December 31, 2014, with no interim installment vesting.

Discussion of Summary Compensation and Grants of Plan-Based Awards Tables

Our executive compensation policies and practices, pursuant to which the compensation set forth in the tables entitled Summary Compensation and 2011 Grants of Plan-Based Awards was paid or awarded, are described above under Compensation Discussion and Analysis. A summary of certain material terms of our compensation plans and arrangements is set forth below.

Amended and Restated Executive Employment Agreement with S. Douglas Hutcheson

Effective as of February 25, 2005, Cricket and Leap entered into an Amended and Restated Executive Employment Agreement with S. Douglas Hutcheson in connection with his appointment as our CEO. The Amended and Restated Executive Employment Agreement amends, restates and supersedes the Executive Employment Agreement dated January 10, 2005, as amended, among Mr. Hutcheson, Cricket and Leap. The Amended and Restated Executive Employment Agreement was amended as of June 17, 2005, February 17, 2006 and December 31, 2008. As amended, the agreement is referred to in this proxy statement as the Executive Employment Agreement.

Under the Executive Employment Agreement, Mr. Hutcheson is entitled to receive an annual base salary, subject to adjustment pursuant to periodic reviews by our Board, and an opportunity to earn an annual performance bonus. In 2011, Mr. Hutcheson s annual base salary was $750,000. In March 2012, the Compensation Committee approved an increase in his annual base salary to $850,000. His annual target performance bonus is equal to 100% of his base salary, and the amount of any annual performance bonus is determined in accordance with Cricket s prevailing annual performance bonus practices that are generally used to determine annual performance bonuses for Cricket s senior executives. In addition, the Executive Employment Agreement specifies that Mr. Hutcheson is entitled to participate in all insurance and benefit plans generally available to Cricket s executive officers.

Under the terms of the Executive Employment Agreement, if Mr. Hutcheson s employment were terminated as a result of his discharge by the Company other than for cause or if he resigned with good reason, he would be entitled to receive: (1) any unpaid portion of his salary and accrued benefits earned up to the date of termination; (2) a lump sum payment equal to two times the sum of his then-current annual base salary plus his target performance bonus; and (3) if he elected to receive continued health coverage under COBRA, the premiums for

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such coverage paid by Cricket for a period of 24 months (or, if earlier, until he was eligible for comparable coverage with a subsequent employer). Mr. Hutcheson would be required to execute a general release as a condition to his receipt of any of these severance benefits.

The Executive Employment Agreement also provides that if Mr. Hutcheson s employment were terminated by reason of his discharge other than for cause or his resignation with good reason, in each case within one year of a change in control of Leap, and he was subject to excise tax pursuant to Section 4999 of the Code as a result of any payments to him, then Cricket would pay him a gross-up payment equal to the sum of the excise tax and all federal, state and local income and employment taxes payable by him with respect to the gross-up payment. This gross-up payment may not exceed $1.0 million and, if Mr. Hutcheson s employment were terminated by reason of his resignation for good reason, such payment would be conditioned on Mr. Hutcheson s agreement to provide consulting services to Cricket or Leap for up to three days per month for up to a one-year period for a fee of $1,500 per day.

If Mr. Hutcheson s employment were terminated as a result of his discharge by Cricket for cause or if he resigned without good reason, he would be entitled only to his accrued base salary through the date of termination. If Mr. Hutcheson s employment were terminated as a result of his death or disability, he would be entitled only to his accrued base salary through the date of death or termination, as applicable, and his pro rata share of his target performance bonus for the year in which his death or termination occurs.

Equity Incentive Plans

2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan

Under the 2004 Plan, Leap grants executive officers and other selected employees non-qualified stock options at an exercise price equal to (or greater than) the fair market value of Leap common stock (as determined under the 2004 Plan) on the date of grant and restricted stock and deferred stock units at a purchase price equal to par value or for no purchase price in exchange for services previously rendered to Leap or its subsidiaries by the recipient. The 2004 Plan allows Leap to grant options that constitute qualified performance-based compensation exempt from the limits on deductibility under Section 162(m) of the Code and also allows Leap to grant incentive stock options within the meaning of Section 422 of the Code. The 2004 Plan will be in effect until December 2014, unless our Board terminates the 2004 Plan at an earlier date. As of March 20, 2012, stock options, restricted stock awards and deferred stock units for up to an aggregate of 6,321,304 shares were outstanding under the 2004 Stock Plan, and 29,595 shares (plus any shares that might in the future be returned to the 2004 Stock Plan as a result of cancellations, forfeitures, repurchases, surrender or expiration of awards) remained available for future grants.

Proposal No. 4 below seeks the approval of Leap s stockholders of an amendment to the 2004 Plan to add performance goals, stock appreciation rights, cash settlement of deferred stock units and cash-denominated awards under the 2004 Plan for the purpose of making certain awards granted pursuant to the 2004 Plan eligible to be deducted under Section 162(m) of the Internal Revenue Code of 1986, as amended, and to provide Leap with the flexibility to grant various cash-based awards under the 2004 Plan. Proposal No. 5 seeks the approval of Leap s stockholders of an amendment clarifying that any awards granted under the 2004 Plan which are later surrendered by their holder for no consideration without having been exercised or settled may again be awarded under the 2004 Plan. The material terms of the 2004 Plan are described in Proposal No. 4 below.

2009 Employment Inducement Equity Incentive Plan

In February 2009, we adopted the 2009 Inducement Plan. The 2009 Inducement Plan was adopted without stockholder approval as permitted under the rules and regulations of the NASDAQ Stock Market. The 2009 Inducement Plan currently authorizes the issuance of up to 400,000 shares of common stock and provides for awards consisting of stock options, restricted stock and deferred stock units, or any combination thereof.

Awards under the 2009 Inducement Plan may only be made to our new employees or new employees of one of our subsidiaries (or following a bona fide period of non-employment) in connection with that employee s commencement of employment with us or one of our subsidiaries if such grant is an inducement material to that employee s entering into employment with us or one of our subsidiaries. As of March 20, 2012, stock options and restricted stock awards for an aggregate of 309,432 shares were outstanding under the 2009 Inducement Plan, and 79,793 shares (plus any shares that might in the future be returned to the 2009 Inducement Plan as a result of cancellations, forfeitures, repurchases or expiration of awards) remained available for future grants.

The 2009 Inducement Plan is administered by the Compensation Committee of Leap s Board. The change-in-control provisions applicable under the 2009 Inducement Plan are generally consistent with the

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change-in-control provisions applicable to the 2004 Plan described in Proposal No. 4 below. However, under the 2009 Inducement Plan, in the event of a change in control or certain other corporate transactions or events, for reasons of administrative convenience, we, in our sole discretion, may refuse to permit the exercise of any award during a period of 30 days prior to the consummation of any such transaction. The 2009 Inducement Plan will be in effect until February 2019, unless Leap s Board terminates the 2009 Inducement Plan at an earlier date. Leap s Board may terminate the 2009 Inducement Plan at any time with respect to any shares not then subject to an award under the 2009 Inducement Plan.

The Leap Wireless International, Inc. Executive Incentive Bonus Plan

The Executive Bonus Plan is a bonus plan for our executive officers and other eligible members of management which provides for the payment of cash bonuses based on Leap s achievement of certain predetermined corporate performance goals. The Executive Bonus Plan authorizes the Compensation Committee or such other committee as may be appointed by the Board to establish periodic bonus programs based on specified performance objectives. The purpose of the Executive Bonus Plan is to motivate its participants to achieve specified performance objectives and to reward them when those objectives are met with bonuses that are intended to be deductible by the Company to the maximum extent possible as performance-based compensation within the meaning of Section 162(m) of the Code. We may, from time to time, also pay discretionary bonuses, or other types of compensation, outside the Executive Bonus Plan which may or may not be tax deductible. The Executive Bonus Plan was approved by Leap s stockholders at the 2007 annual meeting of stockholders and the material terms of performance goals under the Executive Bonus Plan are subject to re-approval by Leap s stockholders at the Annual Meeting pursuant to Proposal No. 3 below. The material terms of the Executive Bonus Plan are described in Proposal No. 3 below.

Employee Stock Purchase Plan

In September 2005, Leap commenced an Employee Stock Purchase Plan, or the ESP Plan, which allows eligible employees to purchase shares of Leap common stock during a specified offering period. A total of 800,000 shares of common stock were initially reserved for issuance under the ESP Plan. The aggregate number of shares that may be sold pursuant to options granted under the ESP Plan is subject to adjustment for changes in Leap s capitalization and certain corporate transactions. The ESP Plan is a compensatory plan under FASB ASC Topic 718, Stock Compensation and is administered by the Compensation Committee of the Board. The ESP Plan will be in effect until May 2015, unless the Board terminates the ESP Plan at an earlier date.

Our employees and the employees of our designated subsidiary corporations that customarily work more than 20 hours per week and more than five months per calendar year are eligible to participate in the ESP Plan as of the first day of the first offering period after they become eligible to participate in the ESP Plan. However, no employee is eligible to participate in the ESP Plan if, immediately after becoming eligible to participate, such employee would own or be treated as owning stock (including stock such employee may purchase under options granted under the ESP Plan) representing 5% or more of the total combined voting power or value of all classes of Leap s stock or the stock of any of its subsidiary corporations.

Under the ESP Plan, shares of Leap common stock are offered during six-month offering periods commencing on each January 1st and July 1st. On the first day of an offering period, an eligible employee is granted a nontransferable option to purchase shares of Leap common stock on the last day of the offering period.

An eligible employee can participate in the ESP Plan through payroll deductions. An employee may elect payroll deductions in any whole percentage (up to 15%) of base compensation, and may decrease or suspend his or her payroll deductions during the offering period. The employee s cumulative payroll deductions (without interest) can be used to purchase shares of Leap common stock on the last day of the offering period, unless the employee elects to withdraw his or her payroll deductions prior to the end of the period. An employee s cumulative payroll deductions for an offering period may not exceed $5,000.

The per share purchase price of shares of Leap common stock purchased on the last day of an offering period is 85% of the lower of the fair market value of such stock on the first or last day of the offering period. An employee may purchase no more than 250 shares of Leap common stock during any offering period. Also, an employee may not purchase shares of Leap common stock during a calendar year with a total fair market value of more than $25,000.

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In the event of certain changes in Leap s capitalization or certain corporate transactions involving Leap, the Compensation Committee will make appropriate adjustments to the number of shares that may be sold pursuant to options granted under the ESP Plan and options outstanding under the ESP Plan. The Compensation Committee is authorized to provide for the termination, cash-out, assumption, substitution or accelerated exercise of such options.

Outstanding Equity Awards At Fiscal Year-End

The following table sets forth certain information with respect to outstanding equity awards held by our named executive officers at December 31, 2011.

	Option Awards				Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Unexercisable(1)	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)(1)	Market Value of Shares or Units of Stock That Have Not Vested(2)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested(#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested($)(2)
S. Douglas Hutcheson	68,085		$ 26.55	01/05/2015	25,000	$ 232,250		
	75,901		$ 26.35	02/24/2015	37,500	$ 348,375		
	116,000		$ 60.62	12/20/2016	40,000	$ 371,600		
	75,000	25,000	$ 51.50	03/25/2018	80,000(3)	$ 743,200		
		83,375	$ 8.09	11/02/2021	50,000(6)	$ 464,500		
		41,688	$ 12.00	11/02/2021				
		41,688	$ 15.00	11/02/2021				
Walter Z. Berger	62,500	37,500(4)	$ 50.13	06/23/2018	22,500(4)	$ 209,025		
		60,000	$ 8.09	11/02/2021	20,000	$ 185,800		
					32,000(3)	$ 297,280		
					24,000(6)	$ 222,960		
							35,000(7)	$ 325,150
Raymond J. Roman		20,000(8)	$ 13.96	02/14/2021	75,000	$ 696,750		
		100,000	$ 13.96	02/14/2021	80,000(8)	$ 743,200		
Robert A. Young	12,500	37,500(9)	$ 13.96	02/14/2021	37,500(9)	$ 348,375		
		50,000(10)	$ 13.96	02/14/2021	50,000(10)	$ 464,500		
William D. Ingram	8,970	56,030(5)	$ 79.00	09/19/2017	12,930(5)	$ 120,120		
	15,000		$ 51.51	12/22/2017	7,500	$ 69,675		
		35,000	$ 8.09	11/02/2021	7,500	$ 69,675		
					10,000	$ 92,900		
					16,000(3)	$ 148,640		
					14,000(6)	$ 130,060		
Albin F. Moschner	120,160		$ 26.55	01/31/2015	15,000	$ 139,350		
	40,000		$ 34.37	10/26/2015	10,000	$ 92,900		
	30,000		$ 60.62	12/20/2016	18,750	$ 174,188		
	13,500	4,500	$ 51.51	02/28/2018	20,000	$ 185,800		
	18,750	6,250	$ 45.69	08/06/2018	32,000(3)	$ 297,280		

(1) Except as otherwise set forth in the table, represents our standard form of stock option or restricted stock award for new hires and for additional grants to individuals with existing equity awards. Each stock option

vests in four equal annual installments on each of the first four anniversaries of the date of grant. For each restricted stock award, 25% of the award vests on the second and third anniversary of the date of grant and 50% of the award vests on the fourth anniversary of the date of grant. Each award is also subject to certain accelerated vesting upon a termination of the named executive officer s employment by us without cause or by the executive for good reason within 90 days prior to or 12 months following a change in control, as described under Severance, Retention and Change-in-Control Arrangements Change-in-Control Vesting of Stock Options and Restricted Stock below.

(2) Computed by multiplying the closing market price of Leap common stock on December 30, 2011 ($9.29), the last business day in fiscal 2011, by the number of shares subject to such stock award.

(3) The performance-vested restricted stock awards vest in 20% increments on the first, second and third anniversaries of the date of grant and 40% on the fourth anniversary of the date of grant. However, in order for an installment of shares to vest on the dates described above, the average of the closing prices of Leap common stock for the prior 30-calendar day period must be greater than $15.75, the closing price of Leap common stock on March 15, 2010, the date on which the award was originally granted; otherwise, the installment of shares will remain unvested until the average of the closing prices of the Company s common stock for any subsequent 30-calendar day period is greater than such amount. On May 12, 2011, the initial 20% installment of the shares vested.

(4) In connection with the commencement of his employment, Mr. Berger was originally granted 100,000 stock options (i) 50,000 of which were scheduled to vest in four equal annual installments on each of the first four anniversaries of the date of grant and (ii) 50,000 of which were scheduled to vest in two equal annual installments on each of the third and fourth anniversaries of the date of grant. Mr. Berger was also granted an aggregate of 45,000 restricted shares in connection with the commencement of his employment (i) 25,000 of which were scheduled to vest over a four-year period, with 25% of the award vesting on the second and third anniversaries of the date of grant and 50% on the fourth anniversary of the date of grant; and (ii) 20,000 of which were scheduled to vest in two equal annual installments on the third and fourth anniversaries of the date of grant.

(5) Represents our standard form of stock option or restricted stock award for new equity grants to new hires between January 2007 and May 2008. The award vests on the fifth anniversary of the date of grant.

(6) The performance-vested restricted stock awards vest in 20% increments on the first, second and third anniversaries of the date of grant and 40% on the fourth anniversary of the date of grant. However, in order for an installment of shares to vest on the dates described above, the average of the closing prices of Leap common stock for the prior 30-calendar day period must be greater than $8.09, the closing price of Leap common stock on November 2, 2011, the date on which the award was originally granted; otherwise, the installment of shares will remain unvested until the average of the closing prices of Leap common stock for any subsequent 30-calendar day period is greater than such amount.

(7) Represents deferred stock units issued to Mr. Berger, the vesting of which was tied to the performance of our Muve Music service and Mr. Berger's continued service. Mr. Berger was awarded 35,000 target units, with the opportunity to earn between zero and 131,250 units based on our achievement of performance measures for Muve Music for fiscal years 2011 and 2012. Each unit represented the right to receive one share of Leap common stock upon vesting and settlement of such unit, subject to our achievement of the performance measures discussed above. Mr. Berger resigned as our executive vice president and CFO in February 2012 and the deferred stock units expired.

(8) The awards of restricted stock and stock options vest in full on the fourth anniversary of the date of grant, with no interim installment vesting.

(9) The awards of restricted stock and stock options vest in equal annual installments on December 31, 2011, 2012, 2013 and 2014.

(10) The awards of restricted stock and stock options vest in full on December 31, 2014, with no interim installment vesting.

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2011 Stock Vested

The following table provides information on awards of restricted stock held by our named executive officers that vested during the fiscal year ended December 31, 2011. None of our named executive officers exercised any options to purchase shares of our common stock during the fiscal year ended December 31, 2011.

	Stock Awards	
Name	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting(1)
S. Douglas Hutcheson	45,000	$ 732,599
Walter Z. Berger	24,250	$ 404,201
Raymond J. Roman		
Robert A. Young	12,500	$ 116,125
William D. Ingram	14,000	$ 185,957
Albin F. Moschner	26,750	$ 362,264

(1) The value realized upon vesting of a restricted stock award is calculated based on the number of shares vesting multiplied by the difference between the fair market value per share of our common stock on the vesting date less the purchase price per share.

Severance, Retention and Change-in-Control Arrangements

We have entered into arrangements with our executives whereby they may receive certain additional benefits in the event that their employment with us were to terminate or in connection with the occurrence of a change in control.

Under our severance arrangements, as described further below, we have agreed to provide our executives with certain benefits in the event that their employment were involuntarily or constructively terminated. These severance benefits are designed to alleviate the financial impact of an involuntary termination through salary, bonus and health benefit continuation and with the intent of providing for a stable work environment. We believe that it is important that we provide reasonable severance benefits to our executive officers because it may be difficult for them to find comparable employment within a short period of time following certain qualifying terminations.

We extend severance and change-in-control benefits to senior management because they are essential to help us fulfill our objectives of attracting and retaining key managerial talent. These arrangements are intended to be competitive within our industry and company size and to attract highly qualified individuals and encourage them to remain with us. These arrangements have formed an integral part of the total compensation that we provide to these individuals and are considered by the Compensation Committee when determining executive officer compensation. The decision to offer these benefits, however, did not influence the Compensation Committee s determinations concerning other direct compensation or benefit levels.

Severance Arrangements

The terms of our severance arrangement with our CEO, S. Douglas Hutcheson, are set forth in his employment agreement and described above in Discussion of Summary Compensation and Grants of Plan-Based Awards Tables Amended and Restated Executive Employment Agreement with S. Douglas Hutcheson.

Cricket and Leap have entered into Severance Benefits Agreements with our other executive officers (except for Robert Young with whom we have an employment agreement). The terms of the Severance Benefit Agreements automatically extend for a one-year period each December 31, unless notice of termination is provided to the executive no later than January 1st of the preceding year. Under the agreements, in the event that the executive were to be terminated other than for cause or if he or she were to resign with good reason, he or she would be entitled to receive

severance benefits consisting of the following: (1) any unpaid portion of his or her

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salary and accrued benefits earned up to the date of termination; (2) a lump sum payment equal to his or her then-current annual base salary and target bonus, multiplied by 1.5 for executive officers who report directly to our CEO and 1.0 for those who do not; and (3) the cost of continuation health coverage (COBRA) for a period of 18 months for executive officers who report directly to our CEO and 12 months for those who do not (or, if shorter, until the time when the respective officer is eligible for comparable coverage with a subsequent employer). In consideration for and prior to receiving any of these benefits, the officer would be required to provide a general release to Cricket and Leap and agree not to solicit any of our employees, and to maintain the confidentiality of our information, for three years following his or her termination.

For purposes of the Severance Benefit Agreements, cause is generally defined to include: (i) the officer s willful neglect of or willful failure substantially to perform his or her duties with Cricket (or its parent or subsidiaries), after written notice and the officer s failure to cure; (ii) the officer s willful neglect of or willful failure substantially to perform the lawful and reasonable directions of the board of directors of Cricket (or of any parent or subsidiary of Cricket which employs the officer or for which the officer serves as an officer) or of the individual to whom the officer reports, after written notice and the officer s failure to cure; (iii) the officer s commission of an act of fraud, embezzlement or dishonesty upon Cricket (or its parent or subsidiaries); (iv) the officer s material breach of his or her confidentiality and inventions assignment agreement or any other agreement between the officer and Cricket (or its parent or subsidiaries), after written notice and the executive s failure to cure; (v) the officer s conviction of, or plea of guilty or nolo contendere to, the commission of a felony or other illegal conduct that is likely to inflict or has inflicted material injury on the business of Cricket (or its parent or subsidiaries); or (vi) the officer s gross misconduct affecting or material violation of any duty of loyalty to Cricket (or its parent or subsidiaries). For purposes of the Severance Benefit Agreements, good reason is generally defined to include the occurrence of any of the following circumstances, unless cured within thirty days after Cricket s receipt of written notice of such circumstance from the officer: (i) a material diminution in the officer s authority, duties or responsibilities with Cricket (or its parent or subsidiaries), including the continuous assignment to the officer of any duties materially inconsistent with his or her position, a material negative change in the nature or status of his or her responsibilities or the conditions of his or her employment with Cricket (or its parent or subsidiaries); (ii) a material diminution in the officer s annualized cash and benefits compensation opportunity, including base compensation, annual target bonus opportunity and aggregate employee benefits; (iii) a material change in the geographic location at which the officer must perform his or her duties, including any involuntary relocation of Cricket s offices (or its parent s or subsidiaries offices) at which the officer is principally employed to a location that is more than 60 miles from such location; or (iv) any other action or inaction that constitutes a material breach by Cricket (or its parent or subsidiaries) of its obligations to the officer under his or her Severance Benefit Agreement.

Employment Agreement with Robert Young

Effective as of January 1, 2011, Cricket and Leap entered into an Employment Agreement with Robert A. Young in connection with his appointment as our executive vice president, field operations. Under the agreement, Mr. Young will be employed for the term beginning on January 1, 2011, and ending on December 31, 2012. Immediately following the employment term, Mr. Young will provide consulting services to us for the period beginning on January 1, 2013, and ending on December 31, 2015. During the consulting period, Mr. Young will report directly to our CEO and he will have the opportunity to provide a minimum of five days per month of consulting services to us. This agreement is referred to in this proxy statement as the Young Employment Agreement.

Under the Young Employment Agreement, Mr. Young is entitled to receive an annual base salary of $425,000 during the employment term. His annual target performance bonus for 2011 and 2012 is equal to 80% of his base salary, and the amount of any annual performance bonus will be determined in accordance with Leap s prevailing annual performance bonus practices that are generally used to determine annual performance bonuses for Leap s senior executives. During the consulting period, Mr. Young will be paid $4,000 per day for his consulting services. In addition, the Young Employment Agreement specifies that during the employment term, Mr. Young is entitled to participate in all insurance and benefit plans generally available to Leap s executive officers, and that during the consulting period, Leap will pay the premiums for Mr. Young s health insurance (until he becomes eligible for comparable coverage with a subsequent employer).

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In connection with the commencement of his employment, Mr. Young was granted two sets of equity awards. The First Equity Awards consisted of options to purchase 50,000 shares of Leap common stock and 50,000 restricted shares of Leap common stock. All of the First Equity Awards are subject to a four-year vesting schedule, with 25% of the options and restricted shares vesting on December 31st of each of 2011, 2012, 2013 and 2014. The Second Equity Awards consisted of options to purchase 50,000 shares of Leap common stock and 50,000 restricted shares of Leap common stock. All of the Second Equity Awards are subject to a four-year vesting schedule, with 100% of the options and restricted shares vesting on December 31, 2014.

Under the terms of the Young Employment Agreement, if Mr. Young s employment is terminated prior to the expiration of the employment term as a result of his discharge by Leap other than for cause or if he resigns with good reason, he will be entitled to receive: (1) any unpaid portion of his salary and accrued benefits earned up to the date of termination; (2) a lump sum payment equal to the lesser of (a) one and one-half times his annual base salary or (b) the base salary remaining to be paid to him for the remainder of the employment term; (3) a lump sum payment equal to his target performance bonus for the year in which the termination occurs; (4) if he elects to receive continued health coverage under COBRA, the premiums for such coverage paid by Leap for the period beginning on the date of termination through December 31, 2015 (or, if earlier, until he becomes eligible for comparable coverage with a subsequent employer); (5) accelerated vesting in full of all of Mr. Young s unvested First Equity Awards; and (6) if the termination occurs during 2012, accelerated vesting of 25% of the unvested Second Equity Awards. During the consulting period, if the consulting period is terminated by Leap other than for cause, Mr. Young will be entitled to receive: (1) any accrued, unpaid consulting fees earned up to the date of termination; (2) if he elects to receive continued health coverage under COBRA, the premiums for such coverage paid by Leap for the period beginning on the date of termination through December 31, 2015 (or, if earlier, until he becomes eligible for comparable coverage with a subsequent employer); (3) accelerated vesting in full of all of Mr. Young s unvested First Equity Awards; and (4) if the termination occurs during 2013, accelerated vesting of 50% of the unvested Second Equity Awards and, if the termination occurs during 2014, accelerated vesting of 75% of the unvested Second Equity Awards. Mr. Young will be required to execute a general release as a condition to his receipt of any of these severance benefits.

If Mr. Young s employment or consultancy is terminated as a result of his death, disability or discharge by Leap for cause, or if he resigns without good reason, he will be entitled only to his accrued base salary or consulting fees through the date of termination.

Retirement and Employment Transition Agreement with Albin Moschner

On January 17, 2011, Leap and Cricket entered into a Retirement and Employment Transition Agreement with Albin F. Moschner. Under the agreement, Mr. Moschner served as Leap s COO until January 31, 2011, after which he commenced providing consulting services to Leap and Cricket for a period of eighteen months. For his consulting services, Leap agreed to pay Mr. Moschner a fee of $79,167 per month as well the cost of continued heath care coverage for Mr. Moschner and his eligible dependents. In addition, during the consulting period Mr. Moschner s unexercised equity awards continue to vest and be exercisable under the terms of 2004 Plan and the respective award agreements pursuant to which they were granted. In the event that Mr. Moschner s consulting services are terminated by the Company before the end of the eighteen-month period, the Company will pay Mr. Moschner the remaining consulting fees due under the agreement and will continue to pay for the cost of continued health care coverage for remaining period.

Cash Retention Arrangements

In March 2010, we entered into retention arrangements with members of senior management, including our named executive officers, which have since terminated and not been renewed. We entered into these agreements in early 2010 in light of the significant public speculation regarding the competitive and strategic landscape in the wireless industry and our belief that it was important to provide senior management with sufficient, future incentives to remain with the Company for a period of time following any change in control to help ensure any orderly transition. If a change in control had occurred before March 8, 2012, cash awards would be made to our named executive officers in the following amounts: Mr. Hutcheson, $1,125,000; Mr. Berger, $750,000; and Mr. Ingram, $450,000.

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Change-in-Control Vesting of Stock Options, Restricted Stock and Deferred Stock Units

The stock option, restricted stock and deferred stock unit awards granted to our named executive officers will become exercisable and/or vested on an accelerated basis in connection with certain changes in control. The period over which the award vests or becomes exercisable after a change in control varies depending upon the date that the award was granted and the date of the change in control.

Under the forms of stock option and restricted stock award agreements for new equity grants to new hires that we used between October 2005 and May 2008, which generally provide for five-year cliff vesting with possible accelerated vesting based on achievement of adjusted EBITDA and net customer additions performance objectives, in the event of a change in control, one-third of the unvested portion of such award would vest and/or become exercisable on the date of the change in control. In the event the named executive officer were providing services to us as an employee, director or consultant on the first anniversary of the change in control, an additional one-third of the unvested portion of such award (measured as of immediately prior to the change in control) would vest and/or become exercisable on such date. In the event that a named executive officer were providing services to us as an employee, director or consultant on the second anniversary of the change in control, the entire remaining unvested portion of such award would vest and/or become exercisable on such date.

In the case of all of our outstanding stock option and restricted stock award agreements, in the event a named executive officer s employment were terminated by us other than for cause, or if the named executive officer resigned with good reason, during the period commencing 90 days prior to a change in control and ending 12 months after such change in control, each stock option and restricted stock award would automatically accelerate and become exercisable and/or vested as to any remaining unvested shares subject to such award on the later of (i) the date of termination of employment or (ii) the date of the change in control. Under the forms of agreements that we have generally used for refresher grants since December 2007, this is the only means by which the underlying awards would vest or become exercisable in connection with a change in control.

In the case of the deferred stock unit awards and long-term incentive cash awards granted to our executive officers beginning in 2012, in the event of a change in control of Leap, the executive would be entitled to receive a number of shares underlying the deferred stock units and a cash award, in each case equal to the target amounts, and the awards would continue to vest pursuant to their terms. However, the awards would immediately vest in the event that the executive officer s employment was terminated by us without cause or by the executive for good reason within 90 days prior to or 12 months following the change in control.

The terms cause and good reason are defined in the applicable award agreements and are substantially similar to the definitions of such terms found in the Severance Benefit Agreements, as described above. The term change in control is defined in the 2004 Plan. A named executive officer would be entitled to accelerated vesting and/or exercisability in the event of a change in control only if he or she were an employee, director or consultant on the effective date of such accelerated vesting and/or exercisability, except as otherwise described above.

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Potential Change-in-Control and Severance Payments

The following table summarizes potential change-in-control and severance payments that could have been made to our named executive officers as of December 31, 2011. The four right-hand columns describe the payments that would apply in four different potential scenarios:

a termination of employment as a result of the named executive officer s voluntary resignation without good reason or his termination by us for cause;

a change in control without a termination of employment;

a termination of employment as a result of the named executive officer s resignation for good reason or termination of employment by us other than for cause, in each case within 90 days before or within a year after a change in control; and

a termination of employment as a result of the named executive officer s resignation for good reason or termination of employment by us other than for cause, in each case not within 90 days before and not within 12 months after a change in control.

Name	Benefit Type	Payment in the Case of a Voluntary Termination without Good Reason or Termination for Cause	Payment in the Case of a Change in Control Without Termination	Payment in the Case of a Termination Other than for Cause or with Good Reason, if Within 90 Days Prior to or Within 12 Months Following a Change in Control	Payment in the Case of a Termination Other than for Cause or with Good Reason, Not Within 90 Days Prior to and Not Within 12 Months Following a Change in Control
S. Douglas Hutcheson	Accrued Salary(1)	$ 16,488		$ 16,488	$ 16,488
	Accrued PTO(2)	$ 254,968		$ 254,968	$ 254,968
	Cash Severance(3)			$ 3,000,000	$ 3,000,000
	COBRA Payments(4)			$ 53,692	$ 53,692
	Value of Equity Award Acceleration			$ 2,259,969(5)	
	Excise Tax Gross-Up Payment			$ 1,000,000(6)	
	Cash Retention Award(7)		$ 1,125,000	$ 1,125,000	
	Total Value:	$ 271,456	$ 1,125,000	$ 7,710,117	$ 3,325,148
Walter Z. Berger	Accrued Salary(1)	$ 11,648		$ 11,648	$ 11,648
	Accrued PTO(2)	$ 122,308		$ 122,308	$ 122,308
	Cash Severance(8)			$ 1,431,000	$ 1,431,000
	COBRA Payments(4)			$ 40,269	$ 40,269
	Value of Equity Award Acceleration			$ 1,312,213(5)	
	Cash Retention Award(7)		$ 750,000	$ 750,000	
	Total Value:	$ 133,956	$ 750,000	$ 3,667,438	$ 1,605,225

Raymond J. Roman	Accrued Salary(1)	$	12,088			$	12,088	$	12,088
	Accrued PTO(2)	$	20,900			$	20,900	$	20,900
	Cash Severance(8)	$	(25,479)(9)			$	1,485,000	$	1,485,000
	COBRA Payments(4)					$	40,269	$	40,269
	Value of Equity Award Acceleration			$		$	1,439,950(5)		
	Total Value:	$	7,509	$		$	2,998,207	$	1,558,257
Robert A. Young	Accrued Salary(1)	$	9,341			$	9,341	$	9,341
	Accrued PTO(2)	$	33,375			$	33,375	$	33,375
	Cash Severance(10)					$	765,000	$	765,000
	COBRA Payments(4)					$	107,384	$	107,384
	Value of Equity Award Acceleration					$	812,875(5)	$	348,375(12)
	Total Value:	$	42,716	$		$	1,727,975	$	1,263,475
William D. Ingram	Accrued Salary(1)	$	6,593			$	6,593	$	6,593
	Accrued PTO(2)	$	28,717			$	28,717	$	28,717
	Cash Severance(8)					$	742,436	$	742,436
	COBRA Payments(4)					$	40,269	$	40,269
	Value of Equity Award Acceleration			$	40,035(11)	$	673,068(5)		
	Cash Retention Award(7)			$	450,000	$	450,000		
	Total Value:	$	35,310	$	490,035	$	1,941,083	$	818,015
Albin F. Moschner	Cash Severance(13)	$	554,169			$	554,169	$	554,169
	COBRA Payments(4)	$	15,660			$	15,660	$	15,660
	Value of Equity Award Acceleration					$	889,513(14)		
	Total Value:	$	569,829	$		$	1,459,342	$	569,829

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(1) Represents earned but unpaid salary as of December 31, 2011.

(2) Represents accrual for paid time off that had not been taken as of December 31, 2011.

(3) Represents two times the sum of (a) Mr. Hutcheson s annual base salary as of December 31, 2011 plus (b) the target amount of his annual bonus for 2011. This amount excludes potential payments of $1,500 per day that Mr. Hutcheson could receive for providing consulting services at Leap s request after a resignation for good reason.

(4) Amounts shown equal an aggregate of 24 months of COBRA payments for Mr. Hutcheson, 48 months of COBRA payments for Mr. Young, seven months of COBRA payments for Mr. Moschner and 18 months of COBRA payments for Messrs. Berger, Roman and Ingram.

(5) Represents the value of those awards that would vest as a result of the executive s termination of employment by us other than for cause or by the named executive officer for good reason within 90 days prior to or within 12 months following a change in control. This value assumes that the change in control and the termination occurred on December 31, 2011 and therefore that the vesting of such award was not previously accelerated as a result of a change in control. The value of such awards was calculated assuming a price per share of our common stock of $9.29, which represents the closing market price of our common stock as reported on the NASDAQ Global Select Market on December 30, 2011.

(6) Represents the maximum excise tax gross-up payment to which Mr. Hutcheson may be entitled pursuant to his Executive Employment Agreement. The actual amount of any such excise tax gross-up payment may be less than the estimated amount. The excise tax gross-up payment takes into account the severance payments and benefits that would be payable to Mr. Hutcheson upon his termination of employment by the Company without cause or his resignation with good reason in connection with a change in control and assumes that such payments would constitute excess parachute payments under Section 280G of the Code, resulting in excise tax liability. See Severance, Retention and Change-in-Control Arrangements above. It also assumes that Mr. Hutcheson would continue to provide consulting services to Leap for three days per month for a one-year period after his resignation with good reason, for a fee of $1,500 per day. Such potential consulting fees are not reflected in the amounts shown in the table above.

(7) Represents payment of the cash retention award approved by the Compensation Committee on March 4, 2010, which agreements have since terminated. If there had been a change in control (as defined in the 2004 Plan) at any time before March 8, 2012 and the Board approved the payment of the award upon the completion of such change in control, then one-third of the award would have been paid in cash upon such change in control, and two-thirds of the award would have been paid upon the six-month anniversary of such change in control. In order to be eligible to receive an award, an executive was required to continue to be employed by Leap on the date of each such payment (subject to the accelerated payment provisions described below.) If an executive s employment had been terminated by Leap other than for cause or by the executive for good reason within 90 days prior to or six months following a change in control, then any unpaid portion of the award would have been paid to the executive upon the executive s termination of employment. As noted above, the cash retention agreements expired by their terms in March 2012 and have not been replaced with new retention arrangements.

(8) Represents one and one-half times the sum of (a) the executive s annual base salary as of December 31, 2011 plus (b) the target amount of his annual bonus for 2011.

(9)

Represents the prorated amount of Mr. Roman s sign-on bonus of $300,000 that he would be required to pay back to Leap in the event he voluntarily resigns without good reason or is terminated by us for cause within one year following February 1, 2011, his first day of employment.

(10) Represents the sum of (a) Mr. Young s base salary remaining to be paid for the remainder of his employment period ending December 31, 2012 plus (b) the target amount of his annual bonus for 2011.

(11) Represents the value of those awards that would vest as a result of a change in control occurring on December 31, 2011, without any termination of employment. The value of such awards was calculated assuming a price per share of our common stock of $9.29, which represents the closing market price of our common stock as reported on the NASDAQ Global Select Market on December 30, 2011.

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(12) Represents the value of those awards that would vest as a result of Mr. Young s termination of employment by us other than for cause or by Mr. Young for good reason not within 90 days before and not within 12 months following a change in control. This value assumes that the date of termination occurred on December 31, 2011. The value of such awards was calculated assuming a price per share of our common stock of $9.29, which represents the closing market price of our common stock as reported on the NASDAQ Global Select Market on December 30, 2011.

(13) Represents the consulting fees due to Mr. Moschner for the seven months ending July 31, 2012 to which Mr. Moschner is entitled under his Retirement and Employment Transition Agreement if his consulting period is terminated by Leap for any reason.

(14) Represents the value of those awards that would vest as a result of the termination of Mr. Moschner s consulting period by us other than for cause within 90 days prior to or within 12 months following a change in control. This value assumes that the change in control and the termination occurred on December 31, 2011. The value of such awards was calculated assuming a price per share of our common stock of $9.29, which represents the closing market price of our common stock as reported on the NASDAQ Global Select Market on December 30, 2011.

Director Compensation

Compensation Arrangements

The annual compensation package for our non-employee directors consists of a combination of cash and equity.

Each of our non-employee directors receives annual cash compensation of $40,000, with the Chairman of the Board receiving $60,000. Following the 2012 Annual Meeting, the annual cash compensation will be increased to $45,000 for our non-employee directors and $65,000 for our Chairman.

The chairman of the Audit Committee receives additional cash compensation of $15,000; and the chairmen of each of the Compensation Committee and the Nominating and Corporate Governance Committee receive additional cash compensation of $5,000. Following the Annual Meeting, the additional annual cash compensation for chairing the Board Committees will increase to $20,000 for the chairman of the Audit Committee and to $10,000 for the chairmen of each of the Compensation Committee and Nominating and Corporate Governance Committee. In addition, following the Annual Meeting, members of the Audit, Compensation and Nominating and Corporate Governance Committees (other than the chairs) will receive a $2,500 annual cash retainer.

Each of our non-employee directors receives an annual award of $100,000 of restricted shares of Leap common stock pursuant to the 2004 Plan. Each such share is valued at fair market value (as defined in the 2004 Plan) on the date of grant. Each award vests in equal installments on each of the first, second and third anniversaries of the date of grant. All unvested shares under each award will vest upon a change in control (as defined in the 2004 Plan). Following the Annual Meeting, the amount of the annual award will increase to $105,000.

Each of our non-employee directors receives a fee of $1,000 to $2,000 (depending on the length of the meeting) for each Board meeting they attend in excess of the first four meetings of the year and for each meeting of any standing committee of the Board they attend in excess of the first four meetings of the year. The per-meeting fee is paid in arrears on a quarterly basis in shares of our common stock pursuant to the 2004 Plan. Prior to January 2012, the shares underlying the grants vested on the first anniversary of the date of grant and all unvested shares vested upon a change in control (as defined in the 2004 Plan) or if the director were not nominated for reelection at the annual meeting of stockholders following the grant date. Beginning in January 2012, the per-meeting fee has been paid in vested shares of our common stock.

From time to time, the Board also pays additional compensation to directors for service on special committees of the Board. We also reimburse directors for reasonable and necessary expenses, including their travel expenses incurred in connection with attendance at Board and committee meetings.

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2011 Director Compensation

The following table sets forth certain compensation information with respect to each of the members of our Board for the fiscal year ended December 31, 2011, other than Mr. Hutcheson, whose compensation relates to his service as president and CEO and who does not receive additional compensation in his capacity as a director.

Name	Fees Earned or Paid in Cash	Stock Awards(1)	Total
John D. Harkey, Jr.	$ 40,000	$ 117,999	$ 157,999
Ronald J. Kramer	$ 40,000	$ 115,997	$ 155,997
Robert V. LaPenta	$ 40,000	$ 117,004	$ 157,004
Mark A. Leavitt	$ 40,000	$ 102,994	$ 142,994
Mark H. Rachesky, M.D.	$ 65,000	$ 131,996	$ 196,996
Richard R. Roscitt	$ 40,000	$ 101,998	$ 141,998
Robert E. Switz	$ 40,000	$ 101,998	$ 141,998
Michael B. Targoff	$ 55,000	$ 133,001	$ 188,001
John H. Chapple(2)		$ 4,006	$ 4,006
William A. Roper, Jr.(2)		$ 10,999	$ 10,999

(1) Represents the grant date fair value of restricted stock awards granted to our non-employee directors in 2011, computed in accordance with FASB ASC Topic 718, Stock Compensation. For information regarding assumptions made in connection with this valuation, please see Note 12 to our consolidated financial statements found in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

On July 29, 2011, we granted 7,429 shares of restricted stock to Messrs. Harkey, Kramer, LaPenta, Leavitt, Rachesky and Targoff in connection with their election to the Board at the 2011 annual meeting of stockholders. The grant date fair value of each of these awards, computed in accordance with FASB ASC Topic 718, was $99,994. On August 15, 2011, we granted 11,641 shares of restricted stock to Messrs. Roscitt and Switz in connection with their appointment to the Board. The grant date fair value of each of these awards, computed in accordance with FASB ASC Topic 718, was $99,996. Each award of restricted stock will vest in equal installments on each of the first, second and third anniversaries of the date of grant. All unvested shares of restricted stock under each award will vest upon a change in control (as defined in the 2004 Plan).

In addition, on the following dates during 2011, we granted the following shares of restricted stock to our directors in the form of per-meeting fees (and the grant date fair value of each award, computed in accordance with FASB ASC Topic 718, is shown in parentheses after each award): (a) January 14, 2011: Dr. Rachesky, 589 shares ($7,999); Mr. Chapple, 295 shares ($4,006); Mr. Harkey, 295 shares ($4,006); Mr. Kramer, 295 shares ($4,006); Mr. LaPenta, 295 shares ($4,006); Mr. Roper, 295 shares ($4,006); and Mr. Targoff, 442 shares ($6,002); (b) July 14, 2011: Dr. Rachesky, 752 shares ($11,002); Mr. Harkey, 410 shares ($5,998); Mr. Kramer, 205 shares ($2,999); Mr. LaPenta, 342 shares ($5,003); Mr. Roper, 478 shares ($6,993); and Mr. Targoff, 889 shares ($13,006); and (c) October 14, 2011: Dr. Rachesky, 1,994 shares ($13,001); Mr. Harkey, 1,227 shares ($8,000); Mr. Kramer, 1,380 shares ($8,998); Mr. LaPenta, 1,227 shares ($8,000); Mr. Leavitt, 460 shares ($2,999); Mr. Roscitt, 307 shares ($2,002); Mr. Switz, 307 shares ($2,002); and Mr. Targoff, 2,147 shares ($13,998). The shares underlying the grants vest on the first anniversary of the date of grant and all unvested shares will vest upon a change in control (as defined in the 2004 Plan). The shares underlying the grants will also vest if the director is not nominated for reelection at the annual meeting of stockholders following the grant date.

The aggregate number of unvested restricted stock awards outstanding at the end of 2011 for each non-employee director was as follows: Mr. Harkey, 14,305; Mr. Kramer, 14,299; Mr. LaPenta, 14,237; Mr. Leavitt, 7,889; Dr. Rachesky, 15,708; Mr. Roscitt, 11,948; Mr. Switz, 11,948; and Mr. Targoff, 15,851.

No options to purchase shares of our common stock were granted to our directors during the fiscal year ended December 31, 2011. The aggregate number of stock option awards that were outstanding at the end of

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2011 for each non-employee director were as follows: Mr. Harkey, 2,500; Mr. LaPenta, 12,500; Dr. Rachesky, 40,200; and Mr. Targoff, 4,500. These option grants were made to our non-employee directors in March 2005, and there have been no option grants to our non-employee directors since that time.

(2) Messrs. Chapple and Roper left our Board following the 2011 annual meeting at the end of their term of service.

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COMPENSATION COMMITTEE REPORT*

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis with management, and based on such review and discussions, recommended to the Board of Directors that the Compensation Discussion and Analysis be included in our Annual Report on Form 10-K for the year ended December 31, 2011 and in our proxy statement for our 2012 Annual Meeting of Stockholders.

COMPENSATION COMMITTEE

Mark H. Rachesky, M.D.

Richard Roscitt

Michael B. Targoff

* The material in this report is not soliciting material, is not deemed filed with the SEC, and is not incorporated by reference in any of our filings under the Securities Act or the Securities Exchange Act of 1934, as amended (the Exchange Act), whether made on, before, or after the date of this proxy statement and irrespective of any general incorporation language in such filing.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The current members of Leap s Compensation Committee are Dr. Rachesky, Mr. Roscitt and Mr. Targoff. None of these directors has at any time been an officer or employee of Leap or any of its subsidiaries.

In August 2004, we entered into a registration rights agreement with certain holders of Leap common stock, including MHR Institutional Partners II LP and MHR Institutional Partners IIA LP (which entities are affiliated with Dr. Rachesky, Leap s Chairman of the Board), whereby we granted them registration rights with respect to the shares of common stock issued to them on the effective date of Leap s plan of reorganization.

In September 2009, we entered into an amended and restated registration rights agreement (the Amended and Restated Registration Rights Agreement) with MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, MHR Institutional Partners IIA LP and MHR Institutional Partners III LP (collectively, the MHR Entities), pursuant to which the parties amended and restated the original registration rights agreement. Each of the MHR Entities is a shareholder of Leap and an affiliate of Dr. Rachesky. Under the Amended and Restated Registration Rights Agreement, we are required to maintain a resale shelf registration statement, pursuant to which these holders may sell their shares of common stock on a delayed or continuous basis. In addition, the MHR Entities have certain demand registration rights and the right in certain circumstances to include their Registrable Securities (as defined in the Amended and Restated Registration Rights Agreement) in registration statements that we file for public offerings of our common stock. The Amended and Restated Registration Rights Agreement also revised the definition of Additional Holder under the agreement to include affiliates of any Holder under the agreement, amended the definition of Registrable Securities to include shares of our common stock held by any Holder now or from time to time in the future, and required us no later than December 2, 2009 and thereafter upon request, to register the resale on a delayed or continuous basis of Registrable Securities held or acquired by the Holders that are not the subject of an existing resale shelf registration statement. We have filed a registration statement to register the resale of all of the shares of common stock held by the MHR Entities. Under the Amended and Restated Registration Rights Agreement, we are obligated to pay all the expenses of registration, other than underwriting fees, discounts and commissions. The Amended and Restated Registration Rights Agreement contains cross-indemnification provisions, pursuant to which we are obligated to indemnify the selling stockholders in the event of material misstatements or omissions in a registration statement that are attributable to us, and they are obligated to indemnify us for material misstatements or omissions attributable to them.

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PROPOSAL 2

ADVISORY VOTE ON EXECUTIVE COMPENSATION

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, stockholders are entitled to vote at the Annual Meeting to provide advisory approval of the compensation we provided to our named executive officers in 2011, as disclosed above in the section of this proxy statement entitled Compensation Discussion and Analysis (which we also refer to as our CD&A) and the related tabular disclosure. Pursuant to the Dodd-Frank Act, the vote on executive compensation is an advisory vote only, and it is not binding on Leap, our Compensation Committee or our Board of Directors. Although the vote is non-binding, our Compensation Committee and Board of Directors value the opinions of our stockholders and will consider the outcome of the vote when making future compensation decisions.

We urge shareholders to read the CD&A section of this proxy statement, which describes in detail the principles and objectives of our executive compensation program, which is designed to attract, motivate and retain talented executives who will drive our financial and operational objectives while creating long-term shareholder value. In particular, in the section of the CD&A entitled Executive Summary on page 13, we review the Company s financial and operational performance in 2011 and discuss how those results influenced the compensation earned by our named executive officers, including discussion of the following:

2011 Year of Continued Competition and Company Transition For the Company, 2011 was a year of continued intense competition within the wireless industry and further transition in our business during which we took additional steps to improve our competitive positioning. These efforts included continuing to develop and evolve our product and service offerings, including our new Muve Music offering; continuing to build brand awareness in our markets and improve the productivity of our distribution; continuing to maintain and develop our network to allow us to provide customers with high-quality service, which included the successful launch of our first commercial LTE trial market; and completion of a number of other significant initiatives to strengthen our operating and financial position, including the upgrade of our customer billing system.

Significant Year-Over-Financial and Operational Growth The changes we introduced in our business in 2011 helped drive significant year-over-year financial and operational growth. Total customers for 2011 increased 8% over the prior year, and our rate of customer turnover, or churn, for the year improved nearly 100 basis points to 3.8%. Total revenues and service revenues increased approximately 14% over prior year amounts, driving a nearly $3 year-over-year increase in ARPU. Adjusted OIBDA increased 7% to $562.6 million.

Reasonable 2011 Compensation for CEO The 2011 compensation earned by our CEO, S. Douglas Hutcheson, was reasonable in light of our 2011 financial and operational performance:

In 2011, Mr. Hutcheson did not receive any increase to his base salary of $750,000 or to the amount of his annual target bonus, which together were below the 25th percentile of total cash compensation opportunity provided by those companies against which we measured our compensation.

Based upon the Company s financial and operational performance in 2011, Mr. Hutcheson received a cash bonus award of $529,687, which represented approximately 71% of his target bonus amount.

Almost half of Mr. Hutcheson s total compensation for 2011 (as reported in the table entitled Summary Compensation) was attributable to long-term equity compensation awards. These awards consisted of stock options, half of which were issued with an exercise price equal to the then-current fair value market of Leap common stock and the remaining half of which were issued at exercise prices significantly in excess of our then-current fair market value. The remaining long-term incentives consisted of performance-vested restricted shares which vest in annual installments only if the average closing price for Leap common stock is at or above the closing price on the date such shares were originally issued for the 30-calendar day period preceding the annual vesting date or for a subsequent 30-day period.

Reasonable 2011 Compensation for Other Named Executive Officers Like Mr. Hutcheson, the other named executive officers earned reasonable compensation amounts in 2011. The Compensation

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Committee did not increase 2011 base salaries for any of our named executive officers. The other named executive officers received 2011 cash bonus awards in amounts below their target bonus levels and, like Mr. Hutcheson, a significant portion of their compensation for 2011 consisted of long-term equity compensation awards.

In addition to discussing 2011 compensation, our CD&A also discusses some of the following governance and compensation practices that our stockholders should consider:

Independent Compensation Committee Compensation amounts provided to our executive officers are determined by our Compensation Committee, which is comprised solely of independent directors, as defined by the NASDAQ Stock Market listing standards.

Substantial Performance-Based Compensation To link compensation to corporate and individual performance, a substantial portion of each executive officer s potential compensation opportunity is comprised of his annual performance bonus and long-term equity incentive awards. For 2011, our long-term incentive awards consisted of stock options, performance-based restricted stock and performance-vested deferred stock units. We have continued our focus on performance-based awards in 2012, granting long-term incentive awards consisting of stock options and performance-based deferred stock units and performance-based cash bonus awards.

Reasonable Severance Benefits We provide our executive officers with severance benefits of between one and two times their annual base salary and target bonus if they are terminated without cause or resign for good reason.

Insider Trading and Equity Grant Policies We have adopted an insider trading policy which prohibits directors and officers from engaging in short sales or trading in put and call options with respect to our equity securities. We have also established an equity grant policy under which equity awards are generally granted and effective, to the extent practicable, on the 14th calendar day of the month following their approval by the Board or Compensation Committee.

We believe that our executive compensation program is reasonable and structured to drive financial and operational performance and that the total compensation earned by our named executive officers for 2011, including our CEO, was appropriate when viewed in light of our achievements for the year, as well as their individual contributions.

We are asking our stockholders to indicate their support for our named executive officer compensation as described in the CD&A and the related tabular disclosure. Accordingly, we ask that our stockholders vote FOR the following resolution:

RESOLVED, that Leap s stockholders approve, on an advisory basis, the compensation of the named executive officers, as disclosed in Leap s Proxy Statement for the 2012 Annual Meeting of Stockholders, pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the Compensation Discussion and Analysis, the 2011 Summary Compensation Table and the other related tables and disclosure.

Vote Required

Stockholder approval, on an advisory basis, of this proposal requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR the approval of our executive compensation program must exceed the number of votes AGAINST the approval of our executive compensation program. Abstentions and broker non-votes will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE APPROVAL, ON AN ADVISORY BASIS, OF OUR EXECUTIVE COMPENSATION PROGRAM AS DESCRIBED IN THIS PROXY STATEMENT

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PROPOSAL 3

REAPPROVE THE MATERIAL TERMS OF THE PERFORMANCE GOALS UNDER THE LEAP WIRELESS INTERNATIONAL, INC. EXECUTIVE INCENTIVE BONUS PLAN

We are asking our stockholders to reapprove the material terms of the performance goals that may apply under the Leap Wireless International, Inc. Executive Incentive Bonus Plan, which we refer to as the Executive Bonus Plan. Stockholders approved the Executive Bonus Plan at our annual meeting of stockholders in May 2007. We are asking stockholders to reapprove the material terms of the performance goals under the Executive Bonus Plan in order to allow for certain awards under the Executive Bonus Plan to qualify as tax-deductible performance-based compensation within the meaning of Section 162(m) of the Code. One of the requirements of performance-based compensation for purposes of Section 162(m) of the Code is that the material terms of the performance goals under which compensation may be paid must be disclosed and approved by our stockholders every five years. Stockholders are not being asked to approve any amendments to the Executive Bonus Plan itself, but are only being asked to reapprove the material terms of the performance goals for purposes of compliance with Section 162(m) of the Code.

Leap s Board believes it is in the best interests of Leap and its stockholders to provide for a stockholder-approved plan under which bonuses paid to its executive officers can be deducted for federal income tax purposes. However, in no event will reapproving the performance goals under the Executive Bonus Plan require the Board, or any applicable committee thereof, to grant bonus awards that are deductible as performance-based compensation within the meaning of Section 162(m) of the Code. The Board and any applicable committee thereof reserves the right to grant bonus awards pursuant to terms and conditions that it determines to be in the best interests of Leap and its stockholders, regardless of whether or not such bonus awards result in compensation that is deductible for federal income tax purposes.

The following summary of the terms of the Executive Bonus Plan is qualified in its entirety by reference to the text of the Executive Bonus Plan, which is attached as Appendix B to this proxy statement.

Purpose of the Executive Bonus Plan

The purpose of the Executive Bonus Plan is to motivate its participants to achieve specified performance objectives and to reward them when those objectives are met with bonuses that are intended to be deductible to the maximum extent possible as performance-based compensation within the meaning of Section 162(m) of the Code.

Administration

The administration of the Executive Bonus Plan has been delegated to the Compensation Committee. All actions taken and all interpretations and determinations relating to the Executive Bonus Plan made in good faith by the Compensation Committee or Leap s Board will be final and binding on Leap and all participants.

Eligibility

Participation in the Executive Bonus Plan is limited to those senior vice presidents or more senior officers of Leap or any subsidiary who are selected by the Compensation Committee to receive a bonus award under the Executive Bonus Plan. There are currently approximately eighteen such senior officers.

Performance Objectives

The Compensation Committee may, in its discretion, establish specific performance objectives (including any adjustments) that must be achieved in order for an eligible participant to become eligible to receive a bonus award payment. In order for a bonus award to qualify as performance-based compensation within the meaning of Section 162(m) of the Code, the performance objectives (including any adjustments) must be established in writing by the Compensation Committee no later than the earlier of (i) the ninetieth day following the commencement of the period of service to which the performance goals relate or (ii) the date preceding the date on which 25% of the period of service has lapsed (as scheduled in good faith at the time the performance

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objectives are established), provided that the achievement of such goals must be substantially uncertain at the time such goals are established in writing. For each performance period with regard to which one or more eligible participants in the Executive Bonus Plan is selected by the Compensation Committee to receive a bonus award, the Compensation Committee will establish in writing one or more objectively determinable performance objectives for such bonus award, based upon one or more of the following business criteria, any of which may be measured in absolute terms (as compared to an incremental increase over a prior period) or as compared to the results of a peer group:

- revenue;
- sales;
- cash flow;
- earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization);
- earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization) per share of Leap s common stock;
- operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization);
- operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization) per share of Leap s common stock;
- return on equity;
- total stockholder return;
- return on capital;
- return on assets or net assets;
- income or net income;
- operating profit or net operating profit;
- operating margin;

cost reductions or savings;

end of period customers or change in customers across a period;

working capital;

market share; and

fair market value per share of Leap s common stock.

The performance objectives may be expressed in terms of overall company performance or the performance of a business function or business unit and/or Leap s subsidiaries. The Compensation Committee, in its discretion, may specify different performance objectives for each bonus award granted under the Executive Bonus Plan. Following the end of the performance period in which the performance objectives are to be achieved, the Compensation Committee will, within the time prescribed by Section 162(m) of the Code, determine whether, and to what extent, the specified performance objectives have been achieved for the applicable performance period. To the extent U.S. generally accepted accounting principles, or GAAP, are applicable, the achievement of the above performance objectives will be determined in accordance with GAAP.

Performance periods under the Executive Bonus Plan will be specified by the Compensation Committee and may be a fiscal year of Leap or one or more fiscal quarters during a fiscal year.

Adjustments to the Performance Objectives

For each bonus award granted under the Executive Bonus Plan, the Compensation Committee, in its discretion, may, at the time of grant, specify in the bonus award that one or more objectively determinable

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adjustments will be made to one or more of the performance objectives established under the criteria discussed above. Such adjustments may include or exclude one or more of the following:

- items related to a change in accounting principle;
- items related to financing activities;
- expenses for restructuring or productivity initiatives;
- other non-operating items;
- items related to acquisitions;
- items attributable to the business operations of any entity acquired by Leap during the year;
- items related to dispositions;
- items related to the launch of one or more new markets or the disposition of one or more markets;
- items related to discontinued operations that do not qualify as a segment of a business under GAAP;
- items related to gain or loss on sale of wireless licenses and/or operating assets;
- items related to impairment of indefinite-lived intangible assets;
- items related to impairment of long-lived assets and related charges; and
- share-based compensation expense.

Awards

Under the Executive Bonus Plan, an eligible participant will be eligible to receive awards based upon Leap s performance against the targeted performance objectives established by the Compensation Committee. If and to the extent the performance objectives are met, an eligible participant will be eligible to receive a bonus award to be determined by the Compensation Committee, which bonus amount may be a specific dollar amount or a specified percentage of such participant s base compensation for the performance period.

Maximum Award; Negative Discretion

The maximum aggregate amount of all bonus awards granted to any eligible participant under the Executive Bonus Plan for any fiscal year is $1,500,000. The Executive Bonus Plan, however, is not the exclusive means for the Compensation Committee to award incentive compensation to those persons who are eligible for bonus awards under the Executive Bonus Plan and does not limit the Compensation Committee from making additional discretionary incentive awards. The Compensation Committee, in its discretion, may reduce or eliminate any bonus amount otherwise payable to an eligible participant under the Executive Bonus Plan.

Form of Payment

All bonus awards will be paid in cash, subject to any applicable tax or other withholding.

Termination of Employment

If an eligible participant s employment with Leap or a subsidiary is terminated, including by reason of such participant s death or disability, prior to payment of any bonus award, all of such participant s rights under the Executive Bonus Plan will terminate and such participant will not have any right to receive any further payments from any bonus award granted under the Executive Bonus Plan. The Compensation Committee may, in its discretion, determine what portion, if any, of the eligible participant s bonus award under the Executive Bonus Plan should be paid if the termination results from such participant s death or disability.

Amendment and Termination

The Compensation Committee or Leap s Board may terminate the Executive Bonus Plan or partially amend or otherwise modify or suspend the Executive Bonus Plan at any time or from time to time, subject to any

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stockholder approval requirements under Section 162(m) of the Code or other requirements. However, with respect to bonus awards that the Compensation Committee determines should qualify as performance-based compensation as described in Section 162(m) of the Code, no action of the Board or the Compensation Committee may modify the performance objectives (or adjustments) applicable to any outstanding bonus award, to the extent such modification would cause the bonus award to fail to qualify as performance-based compensation.

Federal Income Tax Consequences

Under present federal income tax law, a participant generally will recognize ordinary income at the time such participant receives cash pursuant to a bonus award under the Executive Bonus Plan. Subject to the limitations of Section 162(m) of the Code, Leap is generally entitled to a tax deduction at the time a participant recognizes ordinary income attributable to an award under the Executive Bonus Plan. Section 162(m) of the Code generally limits the deductibility of non-qualifying compensation in excess of $1,000,000 paid to covered employees. However, Section 162(m) of the Code exempts qualifying performance-based compensation from the deduction limit if certain requirements are met. The Executive Bonus Plan is intended to satisfy these requirements. The Compensation Committee s policy is to maximize the tax deductibility of executive compensation without compromising the essential framework of the existing total compensation program. However, the Compensation Committee may elect to forgo deductibility for federal income tax purposes if such action is, in the opinion of the Compensation Committee, necessary or appropriate to further the goals of Leap s executive compensation program or otherwise is in Leap s best interests.

New Plan Benefits

It is not possible to determine the actual amount of compensation that will be earned for 2012 or in future years under the Executive Bonus Plan since actual awards will be based on performance objectives and targets established by the Compensation Committee for such performance period in accordance with the terms of the Executive Bonus Plan, and Leap s relative performance against such performance objectives and targets. However, payouts under the Executive Bonus Plan for 2011 to each of our named executive officers are described in the Compensation Discussion and Analysis and are included in the Summary Compensation Table above.

Vote Required

Stockholder approval of this proposal requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR reapproving the material terms of the performance goals under the Leap Wireless International, Inc. Executive Incentive Bonus Plan must exceed the number of votes AGAINST reapproving the material terms of the performance goals under the Leap Wireless International, Inc. Executive Incentive Bonus Plan. Abstentions and broker non-votes will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR REAPPROVING THE MATERIAL TERMS OF THE PERFORMANCE GOALS UNDER THE LEAP WIRELESS INTERNATIONAL, INC. EXECUTIVE INCENTIVE BONUS PLAN

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PROPOSAL 4

APPROVAL OF THE FOURTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

We are asking our stockholders to approve the fourth amendment to our 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan, as previously amended (the 2004 Plan) which adds performance goals, stock appreciation rights (SARs), cash settlement of deferred stock units and cash-denominated awards to the 2004 Plan for the purpose of making certain awards granted pursuant to the 2004 Plan eligible to be deducted under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), and to provide Leap with the flexibility to grant various cash-based awards under the 2004 Plan.

The fourth amendment to the 2004 Plan was adopted on April 23, 2012, subject to stockholder approval. Currently, the 2004 Plan provides for the granting of stock options, restricted stock and deferred stock units (which are currently only settled in stock). Based on the current terms of the 2004 Plan, the only form of award granted pursuant to the 2004 Plan that is eligible to qualify as performance-based compensation for the purposes of Section 162(m) of the Code is a stock option award. In order for other awards granted pursuant to the 2004 Plan to qualify as tax-deductible performance-based compensation, the 2004 Plan must be amended to provide for the granting of qualified performance-based awards, in addition to stock options, and the material terms of the performance goals adopted under the 2004 Plan must be approved by our stockholders. The 2004 Plan will also be amended to provide Leap with the flexibility to grant cash-based awards, including awards denominated in cash, stock appreciation rights and the settlement of deferred stock units in cash, with the cash awards, the stock appreciation rights and the cash-settled deferred stock units all being eligible to qualify as performance-based compensation for the purposes of Section 162(m) of the Code if the Administrator (as defined below) determines that it is in the best interests of the Company to do so.

This amendment does not increase the number of shares available for grant under the 2004 Plan nor does it make any material amendment other than to provide Leap with the flexibility to grant cash awards, settle deferred stock units in cash or stock and grant stock appreciation rights (in addition to stock options), all of which may qualify as performance-based compensation.

Section 162(m) of the Code generally disallows a tax deduction to a publicly-held company for compensation in excess of $1,000,000 paid to its chief executive officer and certain other executive officers. However, under Section 162(m) of the Code, the deduction limit does not apply to qualified performance-based compensation as provided in the Treasury Regulations under Section 162(m) of the Code if the compensation is awarded by an independent compensation committee and the compensation is disclosed to, and approved by, stockholders. In particular, awards will satisfy the qualified performance-based compensation exception if the awards are made under a plan approved by stockholders, the awards are granted by a qualifying compensation committee, the underlying plan sets the maximum number of shares or cash that can be granted to any person within a specified period, the qualified performance-based awards, other than stock options or SARs, are based on performance metrics using stockholder-approved performance goals and, with respect to stock options and SARs, the compensation is based solely on an increase in the stock price after the grant date (i.e., the stock option exercise price is equal to or greater than the fair market value of the stock subject to the award on the grant date).

Our Board believes that it is in the best interests of Leap and its stockholders to provide an incentive plan under which a variety of awards made to executive officers can be deducted by the Company for federal income tax purposes and to provide the Company with flexibility with respect to the forms of awards, including the ability to settle certain awards in cash or stock. While this amendment, if approved, will provide the Company with the flexibility to grant awards under the 2004 Plan that are eligible to qualify as performance-based compensation, the approval of this amendment will not require the Administrator to grant awards that qualify as performance-based compensation and the Administrator reserves the right to grant any form of award permitted by the 2004 Plan, regardless of whether or not the grant of such award results in compensation that is deductible for federal income tax purposes.

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The following summary of the terms of the 2004 Plan and the proposed amendment is qualified in its entirety by reference to the text of the 2004 Plan and the various award agreements used thereunder, forms of which have been filed as exhibits to Leap s Annual Reports on Form 10-K and Current Reports on Form 8-K. The fourth amendment to the 2004 Plan is attached as Appendix C to this proxy statement.

Description of Proposed Amendments

Under the current terms of the 2004 Plan, the only form of equity award that is eligible to qualify as performance-based compensation for the purposes of Section 162(m) of the Code is a stock option. The proposed amendment will allow (i) the granting of cash-denominated awards that are eligible to qualify as performance-based compensation for the purposes of Section 162(m), (ii) other forms of equity awards that are currently available for grant under the 2004 Plan to be eligible to qualify as performance-based compensation for the purposes of Section 162(m) of the Code and (iii) the granting of new forms of awards (SARs, and cash-settled deferred stock units) that will be eligible to qualify as performance-based compensation for the purposes of Section 162(m) of the Code. The amendments include a list of performance goals for stockholder approval and related performance adjustments, in each case, that the Company may use as the underlying performance goals and performance adjustments (if applicable) when granting qualified performance-based awards. The amendment also provides for a process for granting qualified performance-based awards and cash awards that may qualify as performance-based awards. No participant in the 2004 Plan may be granted cash awards that are qualified performance-based awards that have an aggregate maximum payment value in any calendar year in excess of $2,000,000 and the maximum number of shares of common stock that a participant may receive in one year with respect to stock options and SARs is 1,500,000 shares of common stock and the maximum number of shares of common stock for which awards other than stock options or SARs may be granted to a participant in one year is 1,500,000 shares of common stock. This award limit is consistent with the award limit in the 2004 Plan prior to the amendment, but such award limit now applies separately to (i) stock options and SARs and (ii) awards other than stock options or SARs.

The performance goals to be added to the 2004 Plan are the same as provided in the Company s Executive Incentive Bonus Plan discussed in Proposal No. 3 of this proxy statement (and are set forth below). The Administrator may, in its discretion, establish specific performance objectives (including any adjustments) that must be achieved in order for qualified performance-based awards held by an eligible employee to vest. For each qualified performance-based award granted, the Administrator will establish in writing one or more objectively determinable performance objectives for such qualified performance-based awards, based upon one or more of the following business criteria, any of which may be measured in absolute terms, as compared to any incremental increase or as compared to the results of a peer group:

- revenue;
- sales;
- cash flow;
- earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization);
- earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization) per share of Leap s common stock;
- operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization);
- operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization) per share of Leap s common stock;

return on equity;

total stockholder return;

return on capital;

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return on assets or net assets;

income or net income;

operating profit or net operating profit;

operating margin;

cost reductions or savings;

end of period customers or change in customers across a period;

working capital;

market share; and

fair market value per share of Leap s common stock.

The performance objectives may be expressed in terms of overall company performance or the performance of a business function or business unit and/or Leap s subsidiaries.

Adjustments to the Performance Goals

For each qualified performance-based award granted under the 2004 Plan, the Administrator, in its discretion, may, at the time of grant, specify in the qualified performance-based award that one or more objectively determinable adjustments will be made to one or more of the performance objectives established under the criteria discussed above. Such adjustments may include or exclude one or more of the following:

items related to a change in accounting principle;

items related to financing activities;

expenses for restructuring or productivity initiatives;

other non-operating items;

items related to acquisitions;

items attributable to the business operations of any entity acquired by Leap during the year;

items related to dispositions;

items related to the launch of one or more new markets or the disposition of one or more markets;

items related to discontinued operations that do not qualify as a segment of a business under GAAP;

items related to gain or loss on sale of wireless licenses and/or operating assets;

items related to impairment of indefinite-lived intangible assets;

items related to impairment of long-lived assets and related charges; and

share-based compensation expense.

Qualified Performance-Based Awards

The amendments also specifically provide for the grant of equity awards that qualify as performance-based compensation for the purposes of the exemption from Section 162(m) of the Code. All qualified performance-based awards must be granted by a committee comprised solely of two or more outside directors for the purposes of Section 162(m) of the Code. Such awards will be earned, vested and/or payable solely upon the achievement of one or more of the shareholder-approved performance goals that the Administrator approves at the time of the grant.

The fourth amendment does not amend the 2004 Plan in any respect other than to reflect the changes specifically described above. This fourth amendment, adopted on April 23, 2012, supersedes a previous fourth amendment to the 2004 Plan which had been approved by the Board on April 3, 2012 but had not yet been submitted to stockholders for approval nor had the Company taken any actions contemplated by such previous amendment.

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Purposes of the 2004 Plan

The purposes of the 2004 Plan are to attract and retain the best available personnel for positions of responsibility and to provide additional incentive to our employees, directors and consultants to promote the success of our business.

The aggregate number of shares of common stock subject to awards under the 2004 Plan is currently 9,300,000. As of March 20, 2012, stock options, restricted stock awards and deferred stock units for up to an aggregate of 6,321,304 shares were outstanding under the 2004 Stock Plan, and 29,595 shares (plus any shares that might in the future be returned to the 2004 Stock Plan as a result of cancellations, forfeitures, repurchases, surrender or expiration of awards) remained available for future grants. The aggregate authorized number may be adjusted for changes in Leap s capitalization and certain corporate transactions, as described below under the heading Changes in Control and Corporate Transactions. To the extent that an award expires, terminates or is cancelled (or, only if Proposal No. 5 is approved by stockholders, surrendered for no consideration), without having been exercised in full or settled, any unexercised shares subject to the award will be available for future grant or sale under the 2004 Plan. Shares of restricted stock which are forfeited, repurchased by us or surrendered pursuant to the 2004 Plan may again be optioned, granted or awarded under the 2004 Plan. In addition, shares of common stock which are delivered by the holder or withheld by us upon the exercise of any award under the 2004 Plan in payment of the exercise or purchase price of such award or tax withholding thereon may again be optioned, granted or awarded under the 2004 Plan.

The maximum number of shares that may be subject to awards settled in stock other than stock options and SARs granted under the 2004 Plan to any individual in any calendar year may not exceed 1,500,000 shares of common stock and the maximum number of shares with respect to which stock options and SARs may be granted under the 2004 Plan to any individual in any calendar year may not exceed 1,500,000 shares of common stock. The maximum payment value for cash awards that are qualified performance-based awards granted under the 2004 Plan to any individual in any calendar year may not exceed $2,000,000.

Administration

The 2004 Plan is generally administered by the Compensation Committee of Leap s Board (the Administrator). However, Leap s Board determines the terms and conditions of, interprets and administers the 2004 Plan for awards granted to our non-employee directors and, with respect to these awards, the term Administrator refers to Leap s Board. In addition, Leap s Board may elect to grant awards or may determine to delegate to one or more of Leap s directors or officers the authority to make grants to individuals who are not directors or executive officers.

Eligibility

The 2004 Plan authorizes discretionary grants to our employees, consultants and non-employee directors, and to the employees and consultants of our subsidiaries, of stock options, restricted stock and deferred stock units. As of March 20, 2012, outstanding equity awards have been issued to approximately 260 of our approximately 3,800 employees and to our eight non-employee directors.

Awards Under the 2004 Plan

Stock Options. The 2004 Plan provides for discretionary grants of non-qualified stock options, or NQSOs, to employees, non-employee directors and consultants. The 2004 Plan also provides for the grant of incentive stock options, or ISOs, which may only be granted to employees. Stock options may be granted with terms determined by the Administrator; provided that ISOs must meet the requirements of Section 422 of the Code. The 2004 Plan provides that a stock option holder may exercise his or her stock option for three months following termination of employment, directorship or consultancy (12 months in the event such termination results from death or disability). With respect to stock options granted to employees, a stock option terminates immediately in the event of a stock option holder s termination for cause. The exercise price for stock options granted under the 2004 Plan is set by the Administrator and may not be less than par value (except for ISOs and stock options granted to non-employee directors which must have an exercise price not less than fair market

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value on the date of grant). To date, however, all stock options granted under the 2004 Plan have had an exercise price greater than or equal to the fair market value of our common stock on the date of grant, as determined under the 2004 Plan. Stock options granted under the 2004 Plan generally have a term of 10 years. As of March 20, 2012, the fair market value (as that term is defined under the 2004 Plan) of a share of our common stock was $9.79.

Stock Appreciation Rights. The Administrator in its discretion may grant SARs under the 2004 Plan. SARs may be granted in conjunction with a stock option, or granted independently. A SAR entitles the holder to receive, upon exercise, an amount equal to the excess, if any, of the aggregate fair market value of a specified number of shares of our common stock to which such SAR pertains over the aggregate exercise price for the underlying shares. The exercise price of a SAR granted independent of a stock option will not be less than 100% of the fair market value of a share of our common stock on the date of grant. A SAR granted in connection with a stock option may be granted at the grant date of the related stock option. Such a SAR will be exercisable only at such time or times and to the extent that the related stock option is exercisable and will have the same exercise price as the related stock option. A SAR granted in conjunction with a stock option will terminate or be forfeited upon the exercise or forfeiture of the related stock option, and the related stock option will terminate or be forfeited upon the exercise or forfeiture of the related SAR. Each SAR will be evidenced by an award agreement that specifies the exercise price, the number of shares to which the SAR pertains and such additional limitations, terms and conditions as the Administrator may determine. The Company may settle an exercised SAR by delivering a share of our common stock, cash or a combination of stock and cash.

Restricted Stock. Unless otherwise provided in the applicable award agreement, participants generally have all of the rights of a stockholder with respect to restricted stock. Restricted stock may be issued for a nominal purchase price or for no purchase price in exchange for services previously rendered and may be subject to vesting over time or upon attainment of performance targets. Any dividends or other distributions paid on restricted stock are also subject to restrictions to the same extent as the underlying stock. Award agreements related to restricted stock may provide that restricted stock is subject to repurchase by Leap or subject to forfeiture in the event that the participant ceases to be an employee, director or consultant prior to vesting.

Deferred Stock Units. Deferred stock units represent the right to receive shares of common stock or cash (pursuant to the fourth amendment to the 2004 Plan) on a deferred basis. Deferred stock units may be subject to vesting over time or upon attainment of performance targets. A deferred stock unit award will not be settled before the deferred stock unit award has vested, and a participant granted a deferred stock unit award generally will have no voting or dividend rights with respect to the underlying shares of common stock, if any, prior to the time when the stock is distributed. The deferred stock unit award will specify when the award will be settled. The Administrator may provide that the deferred stock unit award may be settled on a deferred basis pursuant to a timely irrevocable election by the participant in compliance with Section 409A of the Code.

Cash Awards. An award granted under the 2004 Plan may be denominated in cash. Each cash award will be granted subject to terms and conditions, if any, that are not inconsistent with the 2004 Plan, as determined by the Administrator and set forth in the applicable award agreement.

Awards Generally Not Transferable

Awards under the 2004 Plan are generally not transferable during the award holder s lifetime, except, with the consent of the Administrator, pursuant to qualified domestic relations orders. The Administrator may allow non-qualified stock options to be transferable to certain permitted transferees (i.e., immediate family members for estate planning purposes).

Changes in Control and Corporate Transactions

In the event of certain changes in the capitalization of Leap or certain corporate transactions involving the Company and certain other events (including a change in control, as defined in the 2004 Plan), the Administrator will make appropriate adjustments to awards under the 2004 Plan and is authorized to provide for the acceleration, cash-out, termination, assumption, substitution or conversion of such awards. We will give award holders 20 days prior written notice of certain changes in control or other corporate transactions or events (or

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such lesser notice as the Administrator determines is appropriate or administratively practicable under the circumstances) and of any actions the Administrator intends to take with respect to outstanding awards in connection with such change in control, transaction or event. Award holders will also have an opportunity to exercise any vested awards prior to the consummation of such changes in control or other corporate transactions or events (and such exercise may be conditioned on the closing of such transactions or events).

Federal Income Tax Consequences Associated with the 2004 Plan

The following is a general summary under current law of the material federal income tax consequences to participants in the 2004 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 a NQSO under the 2004 Plan, the optionee will not have taxable income on the grant of the stock option, nor will we be entitled to any deduction. Generally, upon exercise of NQSOs the optionee will recognize ordinary income, and we will be entitled to a deduction, in an amount equal to the excess of the fair market value of a common share over the stock option exercise price on the date each such stock option is exercised. The optionee s basis for the stock for purposes of determining gain or loss on subsequent disposition of such shares generally will be the fair market value of the common stock on the date the optionee exercises such stock option. Any subsequent gain or loss will be generally taxable as capital gains or losses.

Incentive Stock Options. There is no taxable income to an optionee when an optionee is granted an ISO or when that stock option is exercised. However, the amount by which the fair market value of the shares at the time of exercise exceeds the stock option price will be an item of adjustment for the optionee for purposes of the alternative minimum tax. Gain realized by the optionee on the sale of an ISO is taxable at capital gains rates, and no tax deduction is available to us, unless the optionee disposes of the shares within (a) two years of the date of grant of the stock option or (b) one year of the date the shares were transferred to the optionee. If the common shares are sold or otherwise disposed of before the end of the two-year and one-year periods specified above, the excess of the fair market value of a common share over the stock option exercise price on the date of the stock option s exercise will be taxed at ordinary income rates (or, if less, the gain on the sale), and we will be entitled to a deduction to the extent the optionee must recognize ordinary income. If such a sale or disposition takes place in the year in which the optionee exercises the stock option, the income the optionee recognizes upon sale or disposition of the shares will not be considered an item of adjustment for alternative minimum tax purposes.

An ISO exercised more than three months after an optionee terminates employment, for reasons other than death or disability, will be taxed as a NQSO, and the optionee will recognize ordinary income on the exercise. We will be entitled to a tax deduction equal to the ordinary income, if any, realized by the optionee.

Stock Appreciation Rights. A participant will not recognize taxable income at the time of grant of a SAR, and we will not be entitled to a tax deduction at such time. Upon exercise, a participant will recognize compensation taxable as ordinary income (and subject to income tax withholding in respect of an employee) equal to the fair market value of any shares delivered and the amount of cash paid to the participant, and we will generally be entitled to a corresponding deduction.

Restricted Stock. An individual to whom restricted stock is issued generally will not recognize taxable income upon such issuance, and we generally will not then be entitled to a deduction, unless an election is made by the participant under Section 83(b) of the Code. However, when restrictions on shares of restricted stock lapse, such that the shares are no longer subject to a substantial risk of forfeiture, the individual generally will recognize ordinary income, and we generally will be entitled to a deduction for an amount equal to the excess of the fair market value of the shares at the date such restrictions lapse over the purchase price. If a timely election

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is made under Section 83(b) with respect to restricted stock, the participant generally will recognize ordinary income on the date of the issuance equal to the excess, if any, of the fair market value of the shares at that date over the purchase price of such shares, and we will be entitled to a deduction for the same amount.

Deferred Stock Units. For federal income tax purposes, if an individual is granted deferred stock units, he or she generally will not have taxable income on the grant of the deferred stock units, nor will we then be entitled to any deduction. However, when shares of our common stock are distributed to the individual pursuant to the deferred stock units, he or she generally will recognize ordinary income, and we will be entitled to a corresponding deduction, for an amount equal to the difference between the fair market value of the shares at the date of distribution over the purchase price per share for the stock issuable pursuant to the deferred stock units.

Cash Awards. A participant generally will recognize ordinary income at the time such participant receives cash pursuant to a cash award. Subject to the limitations of Section 162(m) of the Code, Leap is generally entitled to a tax deduction at the time a participant recognizes ordinary income attributable to a cash award.

Section 162(m) of the Code. As described above, in general, under Section 162(m) of the Code, income tax deductions of publicly-held corporations may be limited to the extent total compensation (including base salary, annual bonus, stock option exercises, full-value equity award vesting and settlement, and non-qualified benefits paid) for specified executive officers exceeds $1,000,000 in any one year. However, under Section 162(m) of the Code, the deduction limit does not apply to certain qualified performance-based compensation as provided in the Treasury Regulations under Section 162(m) of the Code if the compensation is awarded by an independent compensation committee and adequately disclosed to, and approved by, stockholders. In particular, equity awards will satisfy the qualified performance-based compensation exception if the awards are made by a qualifying compensation committee, the underlying plan sets the maximum number of shares or maximum amount of cash that can be granted, the qualified performance-based awards, other than stock options, are based on performance metrics using stockholder-approved performance goals and, with respect to stock options, the compensation is based solely on an increase in the stock price after the grant date (*i.e.*, the stock option exercise price is equal to or greater than the fair market value of the stock subject to the award on the grant date).

The Administrator can determine the terms and conditions of equity awards granted under the 2004 Plan such that remuneration attributable to such awards will not be subject to the $1,000,000 limitation. No assurance is given that any specific award will qualify as qualified performance-based compensation under the 2004 Plan.

Section 409A of the Code. Section 409A of the Code, provides certain requirements on non-qualified deferred compensation arrangements. These include requirements on an individual s election to defer compensation and the individual s selection of the timing and form of distribution of the non-qualified deferred compensation. In addition, Section 409A of the Code generally provides that distributions must be made on or following the occurrence of certain events (i.e., the individual s separation from service, a predetermined date, or the individual s death). Section 409A of the Code imposes restrictions on an individual s ability to change his or her distribution timing or form after the compensation has been deferred. For certain individuals who are officers, Section 409A of the Code requires that such individual s distribution commence no earlier than six months after such officer s separation from service.

Certain awards under the 2004 Plan generally will be subject to the requirements of Section 409A of the Code in form and in operation. For example, the following types of awards generally will be subject to Section 409A of the Code: non-qualified stock options granted with an exercise price less than fair market value on the date of grant, deferred stock unit awards and other awards that provide for deferred compensation.

If a 2004 Plan award is subject to and fails to satisfy the requirements of Section 409A of the Code, the recipient of that award may recognize the compensation deferred under the award as ordinary income when such amounts are vested, which may be prior to when the compensation is actually or constructively received. Also, if an award that is subject to Section 409A of the Code fails to comply, Section 409A of the Code imposes an additional 20% federal income tax on the deferred compensation recognized as ordinary income, as well as interest on such deferred compensation.

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2004 Plan Benefits

From January 1, 2012 through March 20, 2012, the Administrator granted the following awards of stock options, restricted stock and deferred stock units under the 2004 Plan. During this period, the Administrator also granted the following cash awards of the kind which, if the proposed amendment to the 2004 Plan described in this Proposal No. 4 is approved by stockholders, will be permitted to be granted in the future under the 2004 Plan:

Name and Position	Aggregate Dollar Value ($)(1)	Number of Stock Options	Shares of Restricted Stock	Number of Deferred Stock Units(2)	Amount of Cash Award(3)
S. Douglas Hutcheson	$ 5,205,513	417,000		183,000	$ 850,000
Walter Z. Berger					
Raymond J. Roman	$ 950,175	38,000		17,000	$ 550,000
Robert A. Young	$ 912,563	45,000		20,000	$ 440,000
William D. Ingram	$ 1,095,475	62,000		27,000	$ 450,000
Albin F. Moschner					
Executive Group(4)	$ 11,873,155	758,000	75,000	290,000	$ 3,722,000
Non-Executive Director Group(5)	$ 77,995		7,823		
Non-Executive Officer Employee Group(6)	$ 3,624,064	55,525	297,990	35,500	

(1) For the equity awards, represents the grant date fair value of each individual equity award (on a grant-by-grant basis) as computed in accordance with FASB ASC Topic 718, Stock Compensation. For information regarding assumptions made in connection with this valuation, please see Note 12 to our consolidated financial statements found in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011. For the cash awards, represents the full value of award at target.

(2) Represents target amounts of performance-based deferred stock units granted to our executive officers. The number of shares to be issued with respect to the deferred stock units will range from 0% to 200% of the targeted amount of the awards, depending upon the extent to which the Company has met certain performance thresholds. For more information regarding the awards, see above under Compensation Discussion and Analysis Elements of Executive Compensation Long Term Incentive Compensation.

(3) Represents target amounts of performance-based cash awards granted to our executive officers. The amount of the cash awards to be paid will range from 0% to 200% of the targeted amount of the awards, depending upon the extent to which the Company has met certain performance thresholds. For more information regarding the awards, see above under Compensation Discussion and Analysis Elements of Executive Compensation Long Term Incentive Compensation.

(4) Represents aggregate amounts received by the Company s executive officers during the period.

(5) Represents aggregate amounts received by members of the Board during the period.

(6) Represents aggregate amounts received by the Company s employees (excluding the Company s executive officers) during the period.

Vote Required

Stockholder approval of this Proposal No. 4 requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR the approval of the fourth amendment to the 2004 Plan must exceed the number of votes AGAINST the approval of the fourth amendment to the 2004 Plan. Abstentions and broker non-votes will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE APPROVAL OF THE FOURTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

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PROPOSAL 5

APPROVAL OF THE FIFTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

We are asking our stockholders to approve the fifth amendment to the 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan of Leap Wireless International, Inc., as previously amended, which we refer to as the 2004 Plan . The fifth amendment of the 2004 Plan was adopted on April 25, 2012, subject to stockholder approval. Currently, the 2004 Plan provides that, to the extent that an award expires, terminates or is cancelled without having been exercised in full or settled, any unexercised shares subject to the award or shares with respect to awards that have not yet been settled will be available for future grant or sale under the 2004 Plan. In addition, the 2004 Plan provides that shares of restricted stock that are forfeited or repurchased by us pursuant to the 2004 Plan may again be optioned, granted or awarded under the 2004 Plan. Further, shares of common stock which are delivered by the holder or withheld by us upon the exercise of any award under the 2004 Plan in payment of the exercise or purchase price of such award or tax withholding thereon may again be optioned, granted or awarded under the 2004 Plan. The fifth amendment to the 2004 Plan clarifies that any awards surrendered for no consideration by their holder without having been exercised in full or settled shall be treated the same as awards that expire, are terminated or are cancelled and the unexercised shares subject to the surrendered award will be available for future grant or sale under the 2004 Plan.

The Board believes that it is in the best interests of Leap and its stockholders to clarify that shares underlying equity awards that are voluntarily surrendered for no consideration by holders may be available for future grant pursuant to the terms of the 2004 Plan. This amendment is intended to provide Leap with the flexibility to accept awards that are no longer providing appropriate retentive value and make them available for future grant under the 2004 Plan in connection with structuring appropriate compensation arrangements for its officers and employees. As a result of the movement in Leap s trading price over the past few years, there are currently outstanding stock options with exercise prices that significantly exceed the current trading price of Leap common stock. Leap may, in the future, ask certain of its senior executives to surrender, for no consideration, these outstanding stock options with exercise prices that significantly exceed the then-current trading price. No agreements, understandings or arrangements have been made with respect to surrendering stock options for no consideration, but, in light of the foregoing facts, it is an alternative that Leap and its senior executives may consider in the future. Furthermore, the recycling of surrendered shares will provide Leap with the ability to attract and retain talented executives and employees, which may provide incentives for current senior executives to surrender outstanding equity awards that have little or no value to the holder. The terms of the 2004 Plan will continue to provide that, unless Leap stockholders approve such transaction in advance, no holder who surrenders shares underlying equity awards can receive a new equity award in exchange for the surrendered awards.

A summary of the key terms of the 2004 Plan and the plan benefits under the 2004 Plan are provided in Proposal No. 4 of this proxy statement. The summary of the terms of the 2004 Plan as set forth in Proposal No. 4 of this proxy statement and the proposed amendment are qualified in their entirety by reference to the text of the 2004 Plan and the various award agreements used thereunder, forms of which have been filed as exhibits to Leap s Annual Reports on Form 10-K and Current Reports on Form 8-K. The fifth amendment to the 2004 Plan is attached as Appendix D to this proxy statement.

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Description of Proposed Amendment

The 2004 Plan currently provides that, to the extent that an award expires, terminates or is cancelled without having been exercised in full or settled, any unexercised shares subject to the award or shares with respect to awards that have not yet been settled will be available for future grant or sale under the 2004 Plan. Further, shares of common stock which are delivered by the holder or withheld by us upon the exercise of any award under the 2004 Plan in payment of the exercise or purchase price of such award or tax withholding thereon may again be optioned, granted or awarded under the 2004 Plan. The fifth amendment to the 2004 Plan clarifies that any awards surrendered for no consideration by their holder without having been exercised in full or settled shall be treated the same as awards that expire, are terminated or are cancelled and the unexercised shares subject to the surrendered award will be available for future grant or sale under the 2004 Plan.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE APPROVAL OF THE FIFTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

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PROPOSAL 6

APPROVAL OF TAX BENEFIT PRESERVATION PLAN

Background and Reasons for the Proposal

The Company has generated substantial net operating losses (NOLs) for federal and state income tax purposes. Subject to certain requirements, we may carry forward these NOLs to offset future taxable income and reduce our income tax liability. As result, these NOLs are a very valuable asset to us, and our Board believes that it is in the best interest of the Company and our stockholders to prevent the imposition of limitations on their use. At December 31, 2011, we had NOLs of approximately $2.5 billion (which begin to expire in 2022 for federal income tax purposes and of which $37.2 million will expire at the end of 2012 for state income tax purposes).

Our ability to utilize these NOLs, however, could be limited if we were to experience an ownership change, as defined in Section 382 of the Code and similar state provisions. In general terms, an ownership change can occur whenever there is a cumulative shift in the ownership of a company by more than 50 percentage points by one or more 5% stockholders within a three-year period.

In order to help deter acquisitions of Leap common stock that could limit our ability to use our NOL carryforwards, Leap entered into a Tax Benefit Preservation Plan with Mellon Investor Services, LLC, as rights agent (the Tax Benefit Preservation Plan), effective August 30, 2011. Our Board adopted the Tax Benefit Preservation Plan, after consultation with its legal, tax and investment banking advisors, in response to trading in Leap common stock in the weeks prior to August 30, 2011, which our Board believed created a substantially increased risk of an ownership change under Section 382. (The Board had previously adopted a similar plan designed to protect our NOLs on September 13, 2010 but later terminated that plan on June 21, 2011, after it had determined, in consultation with its advisors, that the plan was not necessary at that time to protect the value of the NOLs.)

The Tax Benefit Preservation Plan is designed to deter acquisitions of Leap common stock that would result in a stockholder owning 4.99% or more of Leap common stock (as calculated under Section 382), or any existing holder of 4.99% or more of Leap common stock acquiring additional shares, by substantially diluting the ownership interest of any such stockholder unless the stockholder obtains an exemption from our Board. The Board will consider requests to exempt certain proposed acquisition of our common stock from the applicable ownership trigger if it determines in its sole discretion that the requested acquisition will not limit or impair the availability of the NOLs to Leap.

The Board is asking Leap stockholders to approve the Tax Benefit Preservation Plan at the Annual Meeting. The stockholder vote, however, will not be binding on the Board. If stockholders do not approve the Tax Benefit Preservation Plan, the Board intends to hold a meeting to consider whether to retain the plan. The Board will consider the outcome of the stockholder vote, together with all available information relevant to whether the Tax Benefit Preservation Plan continues to be necessary to protect the value of the Company s NOLs, in deciding whether to retain the plan.

Summary Description of the Tax Benefit Preservation Plan

The following description of the terms of the Tax Benefit Preservation Plan does not purport to be complete and is qualified in its entirety by reference to the Tax Benefit Preservation Plan, which is attached hereto as Appendix E and is incorporated herein by reference. **We urge you to read carefully the Tax Benefit Preservation Plan in its entirety as the discussion below is only a summary.**

Dividend of Preferred Stock Purchase Rights. In connection with its adoption of the Tax Benefit Preservation Plan, on August 30, 2011, the Board declared a dividend of one preferred stock purchase right (individually, a Right and collectively, the Rights) for each share of Leap common stock outstanding at the close of business on September 12, 2011 (the Record Date). Each Right will entitle the registered holder, after the Rights become exercisable and until August 31, 2014 (or the earlier redemption, exchange or termination of the Rights), to purchase from Leap one one-thousandth of a share of Leap s Series A Junior Participating

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Preferred Stock, par value $0.0001 per share (the Preferred Stock), at a price of $60.00 per one one-thousandth of a share of Preferred Stock, subject to certain anti-dilution adjustments (the Purchase Price). One Right was distributed to Leap stockholders for each share of common stock owned of record by them at the close of business on September 12, 2011. As long as the Rights are attached to the common stock, Leap will issue one Right with each new share of common stock so that all such shares will have attached Rights. Leap has reserved 160,000 shares of Preferred Stock for issuance upon exercise of the Rights.

Transfer, Flip In and Exercise of Purchase Rights. Until the earlier to occur of (i) the close of business on the tenth business day following a public announcement that a person or group has acquired, or obtained the right to acquire, beneficial ownership of 4.99% or more of our common stock (an Acquiring Person) or (ii) the close of business on the tenth business day following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 4.99% or more of Leap common stock (the earlier of (i) and (ii) being called the Distribution Date), the Rights will be evidenced, with respect to common stock certificates outstanding as of the Record Date, by such common stock certificates, or, with respect to uncertificated common stock registered in book entry form, by notation in book entry, in either case together with a copy of the Summary of Rights attached as Exhibit C to the Tax Benefit Preservation Plan. The Board can postpone the Distribution Date in certain circumstances. Shares held by persons participating in a group are deemed to be beneficially owned by all persons treated as the same entity for purposes of Section 382 of the Code.

The Tax Benefit Preservation Plan provides that any person who beneficially owned 4.99% or more of Leap common stock as of the first public announcement of the adoption of the Tax Benefit Preservation Plan (each an Existing Holder), shall not be deemed to be an Acquiring Person for purposes of the Tax Benefit Preservation Plan unless the Existing Holder becomes the beneficial owner of one or more additional shares of our common stock (other than pursuant to a dividend or distribution paid or made by Leap on the outstanding common stock, pursuant to a split or subdivision of the outstanding common stock or pursuant to the acquisition of common stock upon the exercise of any option, warrants or other rights, or upon the initial grant or vesting of restricted stock, granted by Leap to our directors or officers). However, if upon acquiring beneficial ownership of one or more additional shares of common stock, the Existing Holder does not beneficially own 4.99% or more of our common stock then outstanding, the Existing Holder will not be treated as an Acquiring Person for purposes of the Tax Benefit Preservation Plan.

The Rights will be transferred only with our common stock until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights). After the Distribution Date, separate certificates evidencing the Rights (Right Certificates) will be mailed to holders of record of our common stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

Term of Tax Benefit Preservation Plan and Expiration of Rights. The Rights are not exercisable until the Distribution Date. The Rights will expire on August 31, 2014, subject to Leap s right to extend such date, unless earlier redeemed or exchanged by Leap or terminated, or if the Board determines that the NOLs are utilized in all material respects or no longer available in any material respect under Section 382 of the Code or that an ownership change under Section 382 of the Code would not adversely impact in any material respect the time period in which Leap could use the NOLs, or materially impair the amount of the NOLs that could be used by Leap in any particular time period, for applicable tax purposes. The Rights do not have any voting rights.

Rights and Preferences of Preferred Stock. Each share of Preferred Stock purchasable upon exercise of the Rights will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment equal to the greater of (i) $1.00 or (ii) 1,000 times the dividend, if any, declared per share of our common stock. In the event of liquidation, dissolution or winding up of Leap, the holders of the Preferred Stock will be entitled to a minimum preferential liquidation payment of $1,000 per share (plus any accrued but unpaid dividends), provided that such holders of the Preferred Stock will be entitled to an aggregate payment of 1,000 times the payment made per share of our common stock. Each share of Preferred Stock will have 1,000 votes and will vote together with the common stock. Finally, in the event of any merger, consolidation or other transaction in which shares of our common stock are exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per share of common stock. The Preferred Stock will not be redeemable. The Rights are protected by customary anti-dilution provisions.

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The Purchase Price payable, and the number of one one-thousandth of a share of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock or convertible securities at less than the current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness, cash, securities or assets (excluding regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of Leap for the four quarters ended immediately prior to the payment of such dividend, or dividends payable in shares of Preferred Stock (which dividends will be subject to the adjustment described in clause (i) above)) or of subscription rights or warrants (other than those referred to above).

No Stockholder Rights. Until a Right is exercised, the holder of a Right, as such, will have no rights as a stockholder of Leap other than the rights such holder has as a result of its ownership of our common stock.

Merger, Exchange or Redemption of Purchase Rights. In the event that a person becomes an Acquiring Person or if Leap were the surviving corporation in a merger with an Acquiring Person and shares of our common stock were not changed or exchanged in such merger, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring Person (which Rights will thereafter be void), will thereafter have the right to receive upon exercise that number of shares of common stock having a market value of two times the then current Purchase Price of one Right. In the event that, after a person has become an Acquiring Person, Leap were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction would have a market value of two times the then current Purchase Price of one Right.

Exchange Option. At any time after a person becomes an Acquiring Person and prior to the earlier of one of the events described in the last sentence of the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the then outstanding common stock of Leap, the Board may cause Leap to exchange the Rights (other than Rights owned by an Acquiring Person which have become void), in whole or in part, for shares of our common stock at an exchange rate of one share of common stock per Right (subject to adjustment).

Redemption of Rights. The Rights may be redeemed in whole, but not in part, at a price of $0.01 per Right (the Redemption Price) by the Board at any time prior to the time that an Acquiring Person has become such. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Amendment of Tax Benefit Preservation Plan. Any of the provisions of the Tax Benefit Preservation Plan may be amended by the Company for so long as the Rights are then redeemable, and after the Rights are no longer redeemable, Leap may amend or supplement the Tax Benefit Preservation Plan in any manner that does not adversely affect the interests of the holders of the Rights (other than an Acquiring Person).

Other Considerations

As described above in Background and Reasons for the Proposal, Leap s ability to utilize its significant NOLs may be limited if an ownership change under Section 382 were to occur. The Tax Benefit Preservation Plan is an important tool in reducing the likelihood that such an ownership change will occur and, therefore, in protecting Leap s ability to offset future taxable income. Therefore our Board believes it in Leap s and our stockholders best interests to approve the Tax Benefit Preservation Plan.

Nonetheless, we cannot eliminate the possibility that an ownership change will occur even if the Tax Benefit Preservation Plan is approved. You should consider the following factors when making your voting decision.

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Future Use and Amount of NOLs is Uncertain. Leap s use of the NOLs depends on Leap s ability to generate taxable income in the future. We cannot assure you that Leap will have taxable income in any applicable period or, if we do, whether such income or the NOLs at such time will exceed any potential Section 382 limitations.

Potential Challenge to NOLs. The amount of the NOLs has not been audited or otherwise validated by the Internal Revenue Service (the IRS). The IRS could challenge the amount of the NOLs, which could result in an increase in our liability in the future for income taxes. In addition, determining whether an ownership change has occurred is subject to uncertainty, both because of the complexity and ambiguity of the Section 382 provisions and because of limitations on knowledge that any publicly traded company can have about the ownership of, and transactions in, its securities on a timely basis. Therefore, we cannot assure you that the IRS or other taxing authority will not claim that Leap experienced an ownership change and attempt to reduce the benefit of the NOLs even if the Tax Benefit Preservation Plan is put into place.

Continued Risk of Ownership Change. Although the Tax Benefit Preservation Plan is intended to diminish the likelihood of an ownership change as defined in Section 382 of the Code, Leap cannot assure you that it will be effective. The amount by which Leap s ownership may change in the future could, for example, be affected by purchases and sales of stock by our five-percent stockholders who either are unaware of the plan or make a conscious decision to discount the potential consequences under the plan.

Potential Effects on Liquidity. The Tax Benefit Preservation Plan is intended to deter persons or groups of persons from acquiring ownership of shares of our common stock in excess of the specified limitations. A stockholder s ability to dispose of Leap common stock may be limited if the Tax Benefit Preservation Plan reduces the number of persons willing to acquire our stock or the amount they are willing to acquire. A stockholder s ownership of Leap common stock may become subject to the Tax Benefit Preservation Plan upon actions taken by persons related to, or affiliated with, them. Stockholders are advised to monitor their ownership of our common stock carefully and to consult their own legal advisors to determine whether their ownership of our common stock approaches the proscribed level in the Tax Benefit Preservation Plan.

Potential Impact on Value. The Tax Benefit Preservation Plan could negatively impact the value of Leap common stock by deterring persons or groups of persons from acquiring shares of our common stock, including in acquisitions for which some stockholders might receive a premium above market value.

Potential Anti-Takeover Effect. Our Board adopted the Tax Benefit Preservation Plan to diminish the risk that Leap s ability to use its NOLs to offset future taxable income becomes limited. Nonetheless, the Tax Benefit Preservation Plan may have an anti-takeover effect because it may deter a person or group of persons from, without obtaining the approval of our Board, acquiring beneficial ownership of 4.99% or more of our common stock, or, in the case of persons who already beneficially own 4.99% or more of our common stock, from acquiring beneficial ownership of any additional shares of our common stock. As the Tax Benefit Preservation Plan will cause substantial dilution to any person or group who attempts to acquire such an interest in Leap without advance approval from our Board, one effect of the Tax Benefit Preservation Plan may be to render more difficult or discourage any attempt to acquire Leap or a substantial interest in Leap without Board approval.

Vote Required

Stockholder approval of this proposal requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR the approval of the Tax Benefit Preservation Plan must exceed the number of votes AGAINST the approval of the Tax Benefit Preservation Plan. Abstentions and broker non-votes will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS

VOTE FOR THE APPROVAL OF OUR TAX BENEFIT PRESERVATION PLAN

AS DESCRIBED IN THIS PROXY STATEMENT

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PROPOSAL 7

STOCKHOLDER PROPOSAL REGARDING MAJORITY VOTING IN DIRECTOR ELECTIONS

We received notice from the California State Teachers Retirement System, or CalSTRS, that it intends to present the following stockholder proposal and supporting statement at the Annual Meeting. According to information provided to us, CalSTRS, whose address is 100 Waterfront Place, MS-04, West Sacramento, California, 95605-2807, beneficially owned 131,277 shares of our common stock as of February 24, 2012. In accordance with the applicable proxy rules and regulations, the proposed resolution and supporting statement (for which neither Leap nor its Board of Directors accepts responsibility) are set forth below.

Stockholder Proposal and Supporting Statement

Be It Resolved: That the shareholders of Leap Wireless International, Inc. hereby request that the Board of Directors initiate the appropriate process to amend the Company s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

Supporting Statement: In order to provide shareholders a meaningful role in director elections, the Company s current direction election standard should be changed from a plurality voting standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot, and it will establish a challenging vote standard for board nominees to improve the performance of individual directors and entire boards. Under the Company s current voting system, a nominee for the board can be elected with as little as a single affirmative vote, because withheld votes have no legal effect. A majority vote standard would require that a nominee receive a majority of the votes cast in order to be re-elected and continue to serve as a representative for the shareholders.

In response to strong shareholder support a substantial number of the nation s leading companies have adopted a majority vote standard in company bylaws or articles of incorporation. In fact, more than 77% of the companies in the S&P 500 have adopted majority voting for uncontested elections. We believe the Company needs to join the growing list of companies that have already adopted this standard.

CalSTRS is a long-term shareholder of the Company and we believe that accountability is of utmost importance. We believe the plurality vote standard currently in place at the Company completely disenfranchises shareholders and makes the shareholder s role in director elections meaningless. Majority voting in director elections will empower shareholders with the ability to remove poorly performance directors and increase the directors accountability to the owners of the Company, its shareholders. In addition, those directors who receive the majority support from shareholders will know they have the backing of the very shareholders they represent. We therefore ask you to join us in requesting that the Board of directors promptly adopt the majority vote standard for director elections.

Please vote FOR this proposal.

Board of Directors Statement in Opposition to the Stockholder Proposal

Our Board has carefully reviewed and considered this stockholder proposal and believes it is not in the best interests of our stockholders at this time. For the reasons set forth below, the Board believes that Leap s current plurality voting standard continues to be the best standard for electing our directors. The Board therefore recommends a vote AGAINST the stockholder proposal.

Unlike the long-standing and widely used plurality voting standard, the majority voting standard has not yet been fully tested and may have ramifications that are not yet completely understood.

Leap currently employs a plurality voting standard in director elections, which is the default standard under Delaware law and under the laws of many other states. It is also the prevailing method used by corporations in the United States, including some of the largest corporations in the country and corporations recognized as

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leaders in corporate governance. Because plurality voting has long been the accepted standard, the rules governing plurality voting are well established and widely understood.

The Board believes the majority voting standard, in contrast, may raise issues for which there is little precedent. Our Board believes that there are complex legal and practical issues surrounding the implementation of a majority voting system and that the stockholder proposal fails to adequately address these issues. For example, a majority voting standard presents the potential problem of holdover directors, which would occur when, as a result of the majority voting structure, a director receives less than a majority of the votes cast and is therefore not elected but, as a result of Delaware law, continues to serve until his or her successor is elected and qualified. In other words, implementation of the stockholder proposal could result in a situation where unelected incumbent directors nonetheless remain on our Board for some period of time until a subsequent stockholder meeting is held. In addition, the stockholder proposal does not address how to handle vacancies on the Board that may result if one or more directors are not elected because they fail to receive a majority of the votes cast. We believe that these and other questions regarding the mechanics of majority voting would need to be resolved before exposing our company to the uncertainty and potential unforeseen risks involved in such a system.

In light of these uncertainties, the legal community, shareholder advocates, governance experts, public companies and other groups are still debating whether the purported benefits of such a standard outweigh the risks and are considering how to deal with the practical difficulties of implementing a majority voting standard. The discussions surrounding the adoption of the Dodd-Frank Act, for example, included discussions about whether majority voting should be made mandatory for all public companies. Congress did not, however, mandate majority voting as part of the Dodd-Frank Act, supporting our view that concerns and questions regarding majority voting remain. We have been monitoring and will continue to monitor the ongoing debate and developments on this topic and will re-evaluate our approach as necessary in response to any emerging consensus or progressions in the discourse. Our Board is of the view that any change in voting standards should be undertaken cautiously and only with a better grasp of the potential ramifications of such a change. Until the advantages, disadvantages, feasibility and implications of majority voting are more thoroughly understood, we believe it would be premature and imprudent to abandon our long-standing voting standard to venture into uncharted territory.

A majority voting standard could have negative consequences for us.

Our Board is likewise concerned about the potential unintended and undesirable effects of majority voting for Leap and its stockholders, including, for instance, the potential cost and disruption involved in director elections subject to majority voting and the possible pitfalls associated with failed elections. For example, a majority voting standard may unnecessarily increase the cost to us of soliciting stockholder votes, with the potential to turn every annual meeting into an expensive and time-consuming contest that drains corporate funds and distracts management and our Board from more pressing matters. For example, special-interest or single-issue stockholders could choose to promote a vote no campaign against the election of one or more director nominees in an effort to forward their particular agendas at the expense of other Leap stockholders. To prevent such stockholders from thwarting a productive director or group of directors from being elected, we could be forced to resort to proactive and costly solicitation strategies and to divert our attention from our everyday business. If we are unable to obtain the requisite votes for our slate of directors despite these efforts, such special-interest or single-issue stockholders, who are at best indifferent to and at worst hostile to the long-term interests of other Leap stockholders, may gain undue influence.

Further, in addition to the uncertainties discussed above, the Board believes that holdover directors and vacancies resulting from failed elections could lead to other adverse consequences. In addition to the potentially substantial cost involved in soliciting stockholder votes in the first place, we could incur the potentially substantial cost involved in soliciting stockholder votes all over again if, as a result of the majority voting standard, we are faced with the need to replace a holdover director or fill a resulting vacancy. To make matters worse, the process of identifying, evaluating and electing a director may be an unavoidably slow one, resulting in extended time periods dedicated to the election process and lingering uncertainty over the identity of our Board members. Moreover, vacant Board positions may increase the workload of our existing directors, especially those serving on Board committees, and until any such vacancies are filled, we could confront problems in complying

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with stock exchange listing requirements or federal securities laws. For instance, if an insufficient number of directors who meet the independence and financial literacy requirements of NASDAQ is elected, we could be incapable of taking important corporate action until the situation is remedied.

These potential negative effects of the stockholder proposal are exacerbated by the recent amendment to the New York Stock Exchange, or NYSE, Rule 452, which eliminated broker discretionary voting in uncontested director elections. Even though we are a NASDAQ-listed company, this rule governs all brokers licensed by the NYSE, including those who hold our stock on behalf of a client. Consequently, our Board believes this change will make it more difficult to obtain a high voter turnout for the election of directors and, when combined with the higher voting threshold inherent in a majority voting standard, will ultimately make it more difficult to obtain enough stockholder votes to fill all of our Board seats. To overcome the effect of this amended NYSE rule, we may have to increase our solicitation expenditures even in routine elections where no vote no campaign has been launched, perhaps requiring us to use corporate resources to conduct telephone solicitation campaigns, make second mailings of proxy materials or engage in other vote-getting strategies.

The stockholder proposal is not necessary to ensure the election of highly qualified directors given our already strong corporate governance practices.

Although the stockholder proposal may have a downside for Leap and its stockholders, the Board does not feel it has any clear upside for us, given our strong process for identifying, nominating and evaluating highly qualified director candidates and our commitment to accountability and transparency in corporate governance. The Board has already adopted what it considers to be strong director nomination procedures. As described under the section entitled Board of Directors and Board Committees Director Nomination Process, the Nominating and Corporate Governance Committee, which consists only of independent directors, takes into account a variety of factors when recommending candidates for our Board, including professional integrity, business and industry expertise and practical and mature business judgment, and has established procedures for considering candidates recommended by our stockholders. As a result, our stockholders have consistently elected highly qualified, dedicated directors with outstanding professional reputations and a diverse set of qualifications, attributes and skills, all of whom are independent as defined by the NASDAQ Stock Market listing standards, except for Mr. Hutcheson (who, as our president and CEO and an employee of the Company, is not considered independent under these standards).

Further, contrary to the suggestion made in the stockholder proposal, we do not believe that a plurality voting standard prevents our stockholders from registering dissatisfaction with the Board or is in any way inconsistent with the accountability of our directors to our stockholders. Our stockholders have always had the ability to nominate an alternative Board candidate or candidates for stockholder consideration, and our Bylaws further permit stockholders to remove directors, with or without cause, by a majority of the shares entitled to vote. Moreover, a plurality voting standard does not, as the stockholder proposal implies, render withhold votes meaningless. Because we are required to report voting results of director elections in a publicly filed report on Form 8-K, there is significant visibility as to any director who receives a large number of withhold votes, providing stockholders with a viable means to publicly communicate any dissatisfaction with individual Board members or the Board as a whole to other stockholders. Withhold votes also have the potential to influence our Nominating and Corporate Governance Committee, which reviews the voting results from each annual meeting. Also, because we do not have a classified Board, our stockholders are able to express their confidence, or lack of confidence, in each director on an annual basis. Given the existing safeguards, our Board feels that a different voting standard is unnecessary and would not enhance corporate governance or result in a more effective Board.

Because our directors have consistently received a majority of votes cast, even without the majority voting standard in place, the stockholder proposal is unlikely to result in any tangible benefit in our case.

The stockholder proposal reflects the view that majority voting is unqualifiedly appropriate for all companies at all times and under all circumstances. Our Board, however, disagrees with this one-size-fits-all, cookie-cutter approach to corporate governance. We believe that our plurality standard has served us well to date and that the stockholder proposal is especially unwarranted in our case. At every election we have held since the formation of the Company, our stockholders have elected our Board members, even under a plurality voting

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standard, by the affirmative vote of at least a majority of votes cast. Accordingly, as a practical matter, implementation of the stockholder proposal would not have had any impact on the outcome of these prior director elections. This suggests that the stockholder proposal is not made in response to any particular concerns over the contribution of our directors or any perceived deficiencies with our current director election process. Instead, the historic support our stockholders have shown for our directors underscores our stockholders satisfaction with the composition of our Board and confidence in our corporate governance protections and renders the stockholder proposal unnecessary for our company.

The Board accordingly recommends a vote AGAINST this proposal.

Vote Required

Stockholder approval of this proposal requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR the stockholder proposal must exceed the number of votes AGAINST the stockholder proposal. Abstentions and broker non-votes will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Voting Recommendation of the Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS A VOTE AGAINST THE MAJORITY VOTING STOCKHOLDER PROPOSAL ABOVE

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PROPOSAL 8

RATIFICATION OF SELECTION OF INDEPENDENT REGISTERED

PUBLIC ACCOUNTING FIRM FOR FISCAL 2012

Leap s financial statements for the fiscal year ended December 31, 2011 have been examined by PricewaterhouseCoopers LLP, which has audited Leap s financial statements since 1998. The Board has selected PricewaterhouseCoopers LLP as Leap s independent registered public accounting firm for the fiscal year ending December 31, 2012 and has directed that management submit the selection of the independent registered public accounting firm to the stockholders for ratification at the Annual Meeting. Representatives of PricewaterhouseCoopers LLP are expected to be present at the Annual Meeting and will have the opportunity to make a statement and to respond to appropriate questions.

Vote Required

Stockholder approval of this proposal requires the affirmative vote of a majority of the votes cast with respect to this proposal by the shares present in person or represented by proxy and entitled to vote thereon at the Annual Meeting. A majority of votes cast means that the number of votes FOR the ratification of Leap s independent registered public accounting firm must exceed the number of votes AGAINST the ratification of Leap s independent registered public accounting firm. Abstentions will not be considered as votes cast and will therefore have no effect on the outcome of this proposal.

Stockholders are not required to ratify the selection of PricewaterhouseCoopers LLP as Leap s independent registered public accounting firm. However, the Board is submitting the selection of PricewaterhouseCoopers LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the selection, the Board and the Audit Committee will reconsider whether or not to retain that firm. Even if the selection is ratified, the Board and the Audit Committee in their discretion may direct the appointment of a different independent accounting firm at any time during the year if they determine that such a change would be in the best interests of Leap and its stockholders.

Voting Recommendation of the Board of Directors

THE BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE RATIFICATION OF THE SELECTION OF PRICEWATERHOUSECOOPERS LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR FISCAL 2012

The following table summarizes the aggregate fees billed to Leap by its independent registered public accounting firm, PricewaterhouseCoopers LLP, for the fiscal years ended December 31, 2011 and 2010 (in thousands):

	2011	2010
Audit fees(1)	$ 2,896	$ 2,918
Audit-related fees(2)	274	908
Tax fees(3)	48	468
All other fees		
Total	$ 3,218	$ 4,294

(1) Audit fees consist of fees billed for professional services rendered for the audit of the consolidated annual financial statements of Leap and its subsidiaries and internal control over financial reporting, review of the interim condensed consolidated financial statements included in quarterly reports, and services that are normally provided by PricewaterhouseCoopers LLP in connection with statutory and regulatory filings or engagements.

(2)

Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the consolidated financial statements of Leap and its subsidiaries and are not reported under Audit fees. For the fiscal years ended December 31, 2011 and 2010, these fees

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primarily related to assurance and related services in connection with the implementation and testing of a new customer billing system.

(3) Tax fees consist of fees billed for professional services rendered for tax compliance, advice and planning. For the fiscal years ended December 31, 2011 and 2010, these services included assistance regarding federal and state tax compliance and consultations regarding various income tax issues.

In considering the nature of the services provided by PricewaterhouseCoopers LLP, the Audit Committee determined that such services were compatible with the provision of independent audit services. The Audit Committee discussed these services with PricewaterhouseCoopers LLP and Leap management to determine that they were permitted under the rules and regulations concerning auditor independence promulgated by the SEC to implement the Sarbanes-Oxley Act of 2002, as well as the Public Company Accounting Oversight Board. The Audit Committee requires that all services performed by PricewaterhouseCoopers LLP be pre-approved prior to the services being performed. During the fiscal years ended December 31, 2011 and 2010, all services were pre-approved in accordance with these procedures.

REPORT OF THE AUDIT COMMITTEE

The Audit Committee of Leap s Board of Directors is comprised solely of independent directors, as defined by the listing standards of the NASDAQ Stock Market, and operates pursuant to a written charter adopted by the Board of Directors. The Audit Committee reviews and reassesses the adequacy of the charter on an annual basis. The Audit Committee is responsible for monitoring and overseeing management s conduct of Leap s financial reporting process, Leap s systems of internal accounting and financial controls, and the independent audit of Leap s financial statements by Leap s independent registered public accounting firm.

In this context, the Audit Committee has reviewed and discussed the audited consolidated financial statements of Leap as of and for the fiscal year ended December 31, 2011 with both management and PricewaterhouseCoopers LLP. Specifically, the Audit Committee has discussed with PricewaterhouseCoopers LLP those matters required to be discussed by Statement on Auditing Standards No. 61, as amended, as adopted by the Public Company Accounting Oversight Board.

The Audit Committee has received from PricewaterhouseCoopers LLP the written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant s communications with the audit committee concerning independence, and it has discussed with PricewaterhouseCoopers LLP the issue of its independence from Leap.

Based on the Audit Committee s review of the audited financial statements and its discussions with management and PricewaterhouseCoopers LLP noted above, the Audit Committee recommended to the Board of Directors that the audited consolidated financial statements be included in Leap s Annual Report on Form 10-K for the fiscal year ended December 31, 2011 for filing with the Securities and Exchange Commission.

AUDIT COMMITTEE

Michael B. Targoff, Chairman

Robert V. LaPenta

Mark A. Leavitt

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table contains information about the beneficial ownership of our common stock as of March 20, 2012 for:

- each stockholder known by us to beneficially own more than 5% of our common stock;
- each of our current directors;
- each of our named executive officers; and
- all directors and executive officers as a group.

The percentage of ownership indicated in the following table is based on 79,218,426 shares of common stock outstanding on March 20, 2012.

Information with respect to beneficial ownership has been furnished by each director and officer, and with respect to beneficial owners of more than 5% of our common stock, by Schedules 13D and 13G, filed with the SEC by them. Beneficial ownership is determined in accordance with the rules of the SEC. Except as indicated by footnote and subject to community property laws where applicable, to our knowledge, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options or warrants held by that person that are currently exercisable or will become exercisable within 60 days after March 20, 2012 are deemed outstanding, while such shares are not deemed outstanding for purposes of computing percentage ownership of any other person.

5% Stockholders, Directors and Officers(1)	Number of Shares	Percent of Total
Entities affiliated with MHR Fund Management LLC(2)	23,533,869	29.7%
Wellington Management Company, LLP(3)	9,677,628	12.2%
Capital Research Global Investors(4)	9,640,252	12.2%
Pentwater Capital Management LP (5)	4,950,001	6.2%
John D. Harkey, Jr.(6)	77,774	*
Ronald J. Kramer(6)	26,280	*
Robert V. LaPenta(6)(7)	52,505	*
Mark A. Leavitt(6)	8,992	*
Mark H. Rachesky(6)(8)	23,600,859	29.8%
Richard R. Roscitt(6)	26,551	*
Michael B. Targoff(6)	31,899	*
Robert E. Switz(6)	12,851	*
S. Douglas Hutcheson(9)	712,622	*
Walter Z. Berger(10)	107,278	*
Raymond J. Roman(11)	180,250	*
Robert A. Young (12)	109,160	*
William D. Ingram(13)	103,368	*
Albin F. Moschner(14)	328,070	*
All directors and executive officers as a group (16 persons)	25,335,929	32%

* Represents beneficial ownership of less than 1.0% of the outstanding shares of common stock.

(1) Unless otherwise indicated, the address for each person or entity named below is c/o Leap Wireless International, Inc., 5887 Copley Drive, San Diego, California 92111.

(2) Consists of (a) 353,420 shares of common stock held for the account of MHR Capital Partners Master Account LP, a limited partnership organized in Anguilla, British West Indies (Master Account);

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(b) 42,514 shares of common stock held for the account of MHR Capital Partners (100) LP, a Delaware limited partnership (Capital Partners (100)); (c) 3,340,378 shares of common stock held for the account of MHR Institutional Partners II LP, a Delaware limited partnership (Institutional Partners II); (d) 8,415,428 shares of common stock held for the account of MHR Institutional Partners IIA LP, a Delaware limited partnership (Institutional Partners IIA); and (e) 11,382,129 shares of common stock held for the account of MHR Institutional Partners III LP, a Delaware limited partnership (Institutional Partners III). MHR Advisors LLC (Advisors) is the general partner of each of Master Account and Capital Partners (100), and in such capacity, may be deemed to be the beneficial owner of the shares of common stock held by Master Account and Capital Partners (100). MHR Institutional Advisors II LLC (Institutional Advisors II) is the general partner of Institutional Partners II and Institutional Partners IIA, and in such capacity, may be deemed to be the beneficial owner of the shares of common stock held by Institutional Partners II and Institutional Partners IIA. MHR Institutional Advisors III LLC (Institutional Advisors III) is the general partner of Institutional Partners III, and in such capacity, may be deemed to be the beneficial owner of the shares of common stock held by Institutional Partners III. MHR Fund Management LLC (Fund Management) has entered into an investment management agreement with Master Account, Capital Partners (100), Institutional Partners II, Institutional Partners IIA and Institutional Partners III and thus may be deemed to be the beneficial owner of all of the shares of common stock held by all of these entities. The address for each of these entities is 40 West 57th Street, 24th Floor, New York, New York 10019.

(3) Wellington Management Company, LLP, in its capacity as an investment adviser in accordance with Section 240.13d-1(b)(1)(ii)(E), may be deemed to beneficially own 9,677,628 shares which are held of record by clients of Wellington Management Company, LLP. Wellington Management Company, LLP has shared voting power with respect to 8,047,918 shares and has shared dispositive power with respect to 9,677,628 shares. The address for Wellington Management Company is 280 Congress Street, Boston, Massachusetts 02210.

(4) These securities may be deemed to be beneficially owned by Capital Research Global Investors, an investment adviser, in accordance with Section 240.13d-1(b)(1)(ii)(E). The address for Capital Research Global Investors is 333 South Hope Street, Los Angeles, California 90071.

(5) Consists of (a) 792,000 shares held by PWCM Master Fund Ltd, an exempted company formed in the Cayman Islands (PWCM Master); (b) 2,524,501 shares held by Pentwater Equity Opportunities Master Fund, Ltd., an exempted company formed in the Cayman Islands (Pentwater Equity); (c) 1,089,000 shares held by Oceana Master Fund, Ltd., an exempted company formed in the Cayman Islands (Oceana); and (d) 544,500 shares held by LMA SPC for and on behalf of MAP 98 Segregated Portfolio, a segregated portfolio company formed in the Cayman Islands (MAP). PWCM Master, Pentwater Equity, Oceana and MAP are collectively referred to herein as the Funds . Pentwater Capital Management LP, a Delaware limited partnership (Pentwater Capital), is the investment manager for the Funds. The business address of Pentwater Capital and the Funds is 227 West Monroe, Suite 4000, Chicago, IL 60606.

(6) Includes (a) shares issuable upon exercise of vested stock options, as follows: Dr. Rachesky, 40,200 shares; Mr. Harkey, 2,500 shares; Mr. Targoff, 4,500 shares; and Mr. LaPenta, 12,500 shares; (b) restricted stock awards which vest on May 22, 2012, as follows: Dr. Rachesky, 854 shares; Mr. Harkey, 854 shares; Mr. Targoff, 854 shares; and Mr. LaPenta, 854 shares; (c) restricted stock awards which vest on November 2, 2012, as follows: Mr. Kramer, 4,990 shares; (d) restricted stock awards which vest in two equal installments on May 21, 2012 and 2013, as follows: Dr. Rachesky, 4,090 shares; Mr. Harkey, 4,090 shares; Mr. Targoff, 4,090 shares; and Mr. LaPenta, 4,090 shares; (e) restricted stock awards which vest on July 14, 2012, as follows: Dr. Rachesky, 752 shares; Mr. Harkey, 410 shares; Mr. Kramer, 205 shares; Mr. LaPenta, 342 shares; and Mr. Targoff, 889 shares; (f) restricted stock awards which vest in three equal installments on July 29, 2012, 2013 and 2014, as follows: Dr. Rachesky, 7,429 shares; Mr. Harkey, 7,429 shares; Mr. Kramer, 7,429 shares; Mr. LaPenta, 7,429 shares; Mr. Leavitt, 7,429 shares; and Mr. Targoff, 7,429 shares; (g) restricted stock awards which vest in three equal installments on August 15, 2012, 2013 and 2014, as follows: Mr. Roscitt, 11,641 shares; and Mr. Switz, 11,641 shares; (h) restricted stock awards which vest on October 14, 2012, as follows: Dr. Rachesky, 1,994 shares; Mr. Harkey, 1,227 shares; Mr. Kramer, 1,380 shares; Mr. Leavitt, 460 shares; Mr. Switz, 307 shares; and

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Mr. Targoff, 2,147 shares; and (i) restricted stock awards which vest on January 17, 2013, as follows: Dr. Rachesky, 1,103 shares; Mr. Harkey, 903 shares; Mr. Kramer, 903 shares; Mr. LaPenta, 702 shares; Mr. Leavitt, 1,103 shares; Mr. Roscitt, 1,103 shares; Mr. Switz, 903 shares; and Mr. Targoff, 1,103 shares. Does not include 243 shares issued to Dr. Rachesky, Mr. Roscitt and Mr. Targoff on April 16, 2012.

(7) Includes 5,000 shares held by a corporation which is wholly owned by Mr. LaPenta. Mr. LaPenta has the power to vote and dispose of such shares by virtue of his serving as an officer and director thereof.

(8) Consists of (a) all of the shares of common stock otherwise described in footnote 2 by virtue of Dr. Rachesky s position as the managing member of each of Fund Management, Advisors, Institutional Advisors II and Institutional Advisors III; (b) 40,200 shares of common stock issuable upon exercise of options and 16,222 shares of restricted stock, as further described in footnote 7; and (c) 10,568 shares of common stock which were previously granted as shares of restricted stock and which have vested. The address for Dr. Rachesky is 40 West 57th Street, 24th Floor, New York, New York 10019

(9) Includes (a) restricted stock awards for 25,000 shares which vested on March 25, 2012 (and from which 9,400 shares were sold to pay applicable taxes); (b) restricted stock awards for 37,500 shares, of which 12,500 shares vested on April 14, 2012 (and from which 4,585 shares were sold to pay applicable taxes) and 25,000 shares vest on April 14, 2013; (c) restricted stock awards for 30,000 shares, of which 10,000 shares vest on March 15, 2013 and 20,000 shares vest on March 15, 2014; (d) restricted stock awards for 60,000 shares, of 20,000 shares vest on March 15, 2013 and 40,000 shares vest on March 15, 2014, subject in each case to the achievement of certain performance-based vesting conditions; and (e) restricted stock awards for 50,000 shares, of which 10,000 shares vest on November 2, 2012, 10,000 shares vest on November 2, 2013, 10,000 shares vest on November 2, 2014 and 20,000 shares vest on November 2, 2015, subject in each case to the achievement of certain performance-based vesting conditions. Also includes 359,986 shares issuable upon exercise of vested stock options.

(10) Includes (a) restricted stock awards for 12,500 shares which vest on June 23, 2012; and (b) restricted stock awards for 10,000 shares which vest on June 23, 2012. Also includes 62,500 shares issuable upon exercise of vested stock options. Mr. Berger resigned as our executive vice president and CFO effective February 29, 2011, and his shares of restricted stock will be repurchased by the Company on or about June 14, 2012.

(11) Includes (a) restricted stock awards for 75,000 shares, of which 18,750 shares vest on February 14, 2013, 18,750 shares vest on February 14, 2014 and 37,500 shares vest on February 14, 2015; and (b) restricted stock awards for 80,000 shares which vest on February 14, 2015. Also includes 25,000 shares issuable upon exercise of vested stock options.

(12) Includes (a) restricted stock awards for 37,500 shares, of which 12,500 shares vest on December 31, 2012, 12,500 shares vest on December 31, 2013 and 12,500 shares vest on December 31, 2014; and (b) restricted stock awards for 50,000 shares which vest on December 31, 2014. Also includes 12,500 shares issuable upon exercise of vested stock options.

(13) Includes (a) restricted stock awards for 12,930 shares which vest on September 19, 2012; (b) restricted stock awards for 7,500 shares, of which 2,500 shares vested on April 14, 2012 (and from which 917 shares were sold to pay applicable taxes) and 5,000 shares vest on April 14, 2013; (c) restricted stock awards for 7,500 shares, of which 2,500 shares vest on March 15, 2013 and 5,000 shares vest on March 15, 2014; (d) restricted stock awards for 12,000 shares, of which 4,000 shares vest on March 15, 2013 and 8,000 shares vest on March 15, 2014, subject to certain performance-based vesting conditions; and (e) restricted stock awards for 14,000 shares, of which 2,800 shares vest on November 2, 2012, 2,800 shares vest on November 2, 2013, 2,800 shares vest on November 2, 2014 and 5,600 shares vest on November 2, 2015, subject to certain performance-based vesting conditions. Also includes 23,970 shares issuable upon exercise of vested stock options.

(14)

Includes (a) restricted stock awards for 10,000 shares which vest on August 6, 2012; (b) restricted stock awards for 18,750 shares, of which 6,250 shares vest on April 14, 2012 and 12,500 shares vest on April 14, 2013; (c) restricted stock awards for 15,000 shares, of which 5,000 shares vest on March 15, 2013 and 10,000 shares vest on March 15, 2014; and (d) restricted stock awards for 24,000 shares, of which 8,000 shares vest on March 15, 2013 and 16,000 shares vest on March 15, 2014, subject to certain performance-based vesting conditions. Also includes 226,910 shares issuable upon exercise of vested stock options.

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EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 31, 2011 with respect to equity compensation plans (including individual compensation arrangements) under which Leap common stock is authorized for issuance.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options or Rights	Weighted-Average Exercise Price of Outstanding Options and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans
Equity compensation plans approved by security holders	2,966,672(1)(3)	$ 26.71	1,987,164(4)
Equity compensation plans not approved by security holders	179,782(2)(3)	$ 13.05	101,793
Total	3,146,454	$ 25.93	2,088,957

(1) Represents shares reserved for issuance under the 2004 Plan, adopted by the Compensation Committee of our Board of Directors on December 30, 2004 (as contemplated by our confirmed plan of reorganization) and as amended on March 8, 2007. Stock options granted prior to May 17, 2007 were granted prior to the approval of the 2004 Plan by Leap stockholders. The material features of the 2004 Plan are described above under Discussion of Summary Compensation and Grants of Plan-Based Awards Tables 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan.

(2) Represents shares reserved for issuance under the 2009 Inducement Plan, which was adopted in February 2009 without stockholder approval, as permitted under the rules and regulations of the NASDAQ Stock Market. The material features of the 2009 Inducement Plan are described above under Discussion of Summary Compensation and Grants of Plan-Based Awards Tables 2009 Employment Inducement Equity Incentive Plan. The 2009 Inducement Plan was amended on January 14, 2010 by our Board to increase the number of shares reserved for issuance under the 2009 Inducement Plan by 100,000 shares of Leap common stock.

(3) Excludes 1,946,777 and 109,475 shares of restricted stock issued under the 2004 Plan and 2009 Inducement Plan, respectively, which are subject to release upon vesting of the shares.

(4) Consists of 216,254 shares reserved for issuance under the ESP Plan, and 1,770,910 shares reserved for issuance under the 2004 Plan.

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CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Historically, we have reviewed potential related party transactions on a case-by-case basis. On March 8, 2007 the Board approved a Related Party Transaction Policy and Procedures. Under the policy and procedures, the Audit Committee, or alternatively, those members of the Board who are disinterested, reviews the material facts of specified transactions for approval or disapproval, taking into account, among other factors that it deems appropriate, the extent of the related person s interest in the transaction and whether the transaction is fair to Leap and is in, or is not inconsistent with, the best interests of Leap and its stockholders. Transactions to be reviewed under the policy and procedures include transactions, arrangements or relationships (including any indebtedness or guarantee of indebtedness) in which (1) the aggregate amount involved will or may be expected to exceed $120,000 in any calendar year, (2) Leap or any of its subsidiaries is a participant, and (3) any (a) executive officer, director or nominee for election as a director, (b) greater-than-five-percent beneficial owner of our common stock, or (c) immediate family member, of the persons referred to in clauses (a) and (b), has or will have a direct or indirect material interest (other than solely as a result of being a director or a less-than-ten-percent beneficial owner of another entity). Terms of director and officer compensation that are disclosed in proxy statements or that are approved by the Board or Compensation Committee and are not required to be disclosed in our proxy statement, and transactions where all holders of our common stock receive the same benefit on a pro rata basis, are not subject to review under the policy and procedures.

For a description of the registration rights agreement between Leap and certain affiliates of Dr. Mark H. Rachesky, our Chairman of the Board, see Compensation Committee Interlocks and Insider Participation set forth above in this proxy statement.

STOCKHOLDER PROPOSALS

To be included in our proxy statement, proposals of stockholders that are intended to be presented at our 2013 annual meeting of stockholders must be received no later than December 28, 2012 and must satisfy the conditions established by the SEC for such proposals. However, if Leap changes the date of its 2013 annual meeting by more than thirty days from the anniversary date of the Annual Meeting, the deadline for proposals that stockholders wish to include in the proxy statement for the 2013 annual meeting of stockholders will be a reasonable time before we begin to print and mail the proxy materials for that meeting.

In order for a stockholder proposal that is not included in our proxy statement for the 2013 annual meeting to be eligible for presentation at the 2013 annual meeting of stockholders, the stockholder presenting such proposal must give timely notice of the proposal to us in writing and otherwise comply with the provisions of our Bylaws. For a proposal to be timely, Article II, Section 8 of the Bylaws provides that we must have received the stockholder s notice not less than seventy days nor more than ninety days prior to the anniversary of our annual meeting, meaning between February 16, 2013 and March 8, 2013 for the 2013 annual meeting. In the event that the 2013 annual meeting of stockholders is advanced by more than thirty days or delayed by more than seventy days from the anniversary date of the Annual Meeting, proposals that stockholders wish to present at the 2013 annual meeting must be received by Leap no earlier than the ninetieth day prior to the date of the 2013 annual meeting of stockholders and no later than the later of the seventieth day prior to such annual meeting date or the date which is ten days after the day on which public announcement of the date of such meeting is first made.

All proposals should be sent to Leap s Secretary at our principal executive offices, 5887 Copley Drive, San Diego, California 92111.

OTHER MATTERS

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 requires Leap s directors and executive officers, and persons who beneficially own more than ten percent of a registered class of Leap s equity securities to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity

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securities of Leap. Officers, directors and greater-than-ten-percent beneficial owners are required by SEC regulations to furnish Leap with copies of all Section 16(a) forms they file.

To Leap s knowledge, based solely on a review of the copies of such reports furnished to Leap and written representations that no other reports were required, during the fiscal year ended December 31, 2011, all Section 16(a) filing requirements applicable to its officers, directors and greater-than-ten-percent beneficial owners were complied with.

Householding of Proxy Materials

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements, annual reports and notices of Internet availability of proxy materials with respect to two or more stockholders sharing the same address by delivering a single proxy statement, annual report or notice of Internet availability of proxy materials, as applicable, addressed to those stockholders. This process, which is commonly referred to as householding, potentially means extra convenience for stockholders and cost savings for companies. Brokers with account holders who are Leap stockholders may be householding our proxy materials. If you hold your shares in an account with one of those brokers, a single proxy statement, annual report, or notice of Internet availability of proxy materials, as applicable, may be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker that it will be householding communications to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement, annual report or notice of Internet availability of proxy materials, as applicable, please notify your broker. Householding for bank and brokerage accounts is limited to accounts within the same bank or brokerage firm. If two individuals share the same last name and address but have accounts containing our stock at two different banks or brokerage firms, your household will receive two copies of our proxy statement, annual report or notice of Internet availability of proxy materials, as applicable one from each firm. Stockholders who currently receive multiple copies of our proxy statement, annual report or notice of Internet availability of proxy materials, as applicable, from one bank or brokerage firm and would like to request householding of their communications should contact their bank or brokerage firm.

We will deliver promptly upon written or oral request a separate proxy statement, annual report or notice of Internet availability of proxy materials, as applicable, to a stockholder at a shared address to which a single copy of the documents was delivered. Please direct such requests to Leap Wireless International, Inc., Attn. Investor Relations, 5887 Copley Drive, San Diego, California 92111, or to our Investor Relations Dept. by telephone at (858) 882-9876.

Annual Report on Form 10-K

A copy of Leap s Annual Report on Form 10-K for the fiscal year ended December 31, 2011, as filed with the SEC, including the financial statements and the financial statement schedules, but excluding exhibits, may be obtained by stockholders without charge by written request addressed to Leap Wireless International, Inc., Attn: Director of Investor Relations, 5887 Copley Drive, San Diego, California 92111. The exhibits to the Annual Report on Form 10-K are available upon payment of charges that approximate our cost of reproduction.

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Other Business

The Board knows of no other matters that will be presented for consideration at the Annual Meeting, or any continuation, adjournment or postponement thereof. If any other matters are properly brought before the Annual Meeting, or any continuation, adjournment or postponement thereof, it is the intention of the persons named in the accompanying proxy to vote on such matters in accordance with their best judgment.

All stockholders are urged to complete, sign, date and return the accompanying proxy card in the enclosed envelope as promptly as possible.

By Order of the Board of Directors

S. Douglas Hutcheson

President and Chief Executive Officer

April 27, 2012

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APPENDIX A

ADJUSTED OIBDA AND ARPU DEFINITIONS AND RECONCILIATIONS

Adjusted OIBDA

Adjusted OIBDA is a non-GAAP financial measure defined as operating income (loss) before depreciation and amortization, adjusted to exclude the effects of: gain/(loss) on sale, exchange or disposal of assets, net; impairments and other charges; and share-based compensation expense. Adjusted OIBDA should not be construed as an alternative to operating income (loss) or net income (loss) as determined in accordance with GAAP, or as an alternative to cash flows from operating activities as determined in accordance with GAAP or as a measure of liquidity.

In a capital-intensive industry such as wireless telecommunications, management believes that adjusted OIBDA, and the associated percentage margin calculations, are meaningful measures of our operating performance. We use adjusted OIBDA as a supplemental performance measure because management believes it facilitates comparisons of our operating performance from period to period and comparisons of our operating performance to that of other companies by backing out potential differences caused by the age and book depreciation of fixed assets (affecting relative depreciation expenses) as well as the items described above for which additional adjustments were made. While depreciation and amortization are considered operating costs under generally accepted accounting principles, these expenses primarily represent the non-cash current period allocation of costs associated with long-lived assets acquired or constructed in prior periods. Because adjusted OIBDA facilitates internal comparisons of our historical operating performance, management also uses this metric for business planning purposes and to measure our performance relative to that of our competitors. In addition, we believe that adjusted OIBDA and similar measures are widely used by investors, financial analysts and credit rating agencies as measures of our financial performance over time and to compare our financial performance with that of other companies in our industry.

Adjusted OIBDA has limitations as an analytical tool, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations include:

- it does not reflect capital expenditures;
- although it does not include depreciation and amortization, the assets being depreciated and amortized will often have to be replaced in the future and adjusted OIBDA does not reflect cash requirements for such replacements;
- it does not reflect costs associated with share-based awards exchanged for employee services;
- it does not reflect the interest expense necessary to service interest or principal payments on current or future indebtedness;
- it does not reflect expenses incurred for the payment of income taxes and other taxes; and
- other companies, including companies in our industry, may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Management understands these limitations and considers adjusted OIBDA as a financial performance measure that supplements but does not replace the information provided to management by our GAAP results.

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The following table reconciles adjusted OIBDA to operating income (loss), which we consider to be the most directly comparable GAAP financial measure to adjusted OIBDA (in thousands):

	Year Ended December 31, 2011	Year Ended December 31, 2010
Operating income (loss)	$ (25,352)	$ (450,738)
Plus depreciation and amortization	548,426	457,035
OIBDA	$ 523,074	$ 6,297
Plus (gain) loss on sale, exchange or disposal of assets, net	(2,622)	5,061
Plus impairments and other charges	26,770	477,327
Plus share-based compensation expense	15,328	36,609
Adjusted OIBDA	$ 562,550	$ 525,294

ARPU

ARPU is service revenues, less pass-through regulatory fees and telecommunications taxes, divided by the weighted-average number of customers, divided by the number of months during the period being measured. Management uses ARPU to identify average revenue per customer, to track changes in average customer revenues over time, to help evaluate how changes in our business, including changes in our service offerings, affect average revenue per customer, and to forecast future service revenue. In addition, ARPU provides management with a useful measure to compare our subscriber revenue to that of other wireless communications providers. Customers of our Cricket Wireless and Cricket Broadband service are generally disconnected from service approximately 30 days after failing to pay a monthly bill. Cricket PAYGo customers generally have 60 days from the date they activated their account, were charged a daily or monthly access fee for service or last topped-up their account (whichever is later) to do so again, or they will have their account suspended for a subsequent 60-day period before being disconnected. We currently plans to modify our disconnection policies in mid-2012 to eliminate this subsequent 60-day grace period and disconnect customers who have not been charged an access fee or topped-up their account during the preceding 60-days. Because our calculation of weighted-average number of customers includes customers who are not currently paying for service but who have not yet been disconnected from service because they have not paid their last bill or have not replenished their account, ARPU may appear lower during periods in which we have significant disconnect activity. We believe investors use ARPU primarily as a tool to track changes in our average revenue per customer and to compare our per customer service revenues to those of other wireless communications providers. Other companies may calculate this measure differently.

The following table reconciles total service revenues used in the calculation of ARPU to service revenues, which we consider to be the most directly comparable GAAP financial measure to ARPU (unaudited; in thousands, except weighted-average number of customers and ARPU):

	Year Ended December 31, 2011	Year Ended December 31, 2010
Service revenues	$ 2,829,281	$ 2,482,601
Less pass-through regulatory fees and telecommunications taxes	(32,570)	(108,376)
Total service revenues used in the calculation of ARPU	$ 2,796,711	$ 2,374,225
Weighted-average number of customers	5,724,152	5,239,638
ARPU	$ 40.72	$ 37.76

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APPENDIX B

LEAP WIRELESS INTERNATIONAL, INC.

EXECUTIVE INCENTIVE BONUS PLAN

The Leap Wireless International, Inc. Executive Incentive Bonus Plan (the Plan) is designed to motivate and reward certain executive officers of Leap Wireless International, Inc., a Delaware corporation (the Company), and its Subsidiaries (as defined below) to produce results that increase stockholder value and to encourage individual and corporate performance that helps the Company achieve both short and long-term corporate objectives.

The Board of Directors of the Company (the Board) has adopted this Plan, effective with respect to bonus awards for periods beginning on or after January 1, 2007, subject to approval of the Plan by the stockholders of the Company.

ARTICLE I.

Certain Definitions

SECTION 1.1 *Base Compensation.* Base Compensation of a Participant for a Plan Year, or portion of a Plan Year, shall mean the Participant s regular base salary, excluding bonuses, expense reimbursements, moving expenses, fringe benefits, stock options, restricted stock and other stock based awards, and other payments which are not considered part of regular base salary, payable during such Plan Year or such portion of the Plan Year, determined prior to any reduction under a plan subject to Section 125 or 401(k) of the Code or any deferral under a non-qualified deferred compensation plan.

SECTION 1.2 *Code.* Code shall mean the Internal Revenue Code of 1986, as amended.

SECTION 1.3 *Committee.* Committee shall mean the Compensation Committee of the Board, or such other committee as may be appointed by the Board consisting solely of two or more Directors, each of whom qualifies as an outside director for purposes of Section 162(m) of the Code.

SECTION 1.4 *Common Stock.* Common Stock shall mean the common stock, par value $.0001 per share, of the Company.

SECTION 1.5 *Director.* Director shall mean a member of the Board.

SECTION 1.6 *Eligible Individual.* Eligible Individual shall mean any Senior Vice President or more senior officer of the Company or any Subsidiary.

SECTION 1.7 *Fair Market Value.* Fair Market Value shall have the meaning given to such term in the Stock Option, Restricted Stock and Deferred Stock Unit Plan.

SECTION 1.8 *Participant.* Participant shall mean any Eligible Individual selected by the Committee to receive a bonus award under the Plan.

SECTION 1.9 *Performance Period.* Performance Period shall mean the period of time specified by the Committee for which the achievement of a Performance Goal (as defined below) shall be determined. The Performance Period with respect to a Performance Goal may be a Plan Year, or one or more fiscal quarters of a Plan Year.

SECTION 1.10 *Plan Year.* A Plan Year shall be the fiscal year of the Company, including the fiscal year ending December 31, 2007.

SECTION 1.11 *Stock Option, Restricted Stock and Deferred Stock Unit Plan.* Stock Option, Restricted Stock and Deferred Stock Unit Plan shall mean the 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan of Leap Wireless International, Inc., as amended from time to time.

SECTION 1.12 *Subsidiary.* Subsidiary shall mean any subsidiary corporation, as defined in Section 424(f) of the Code, of the Company.

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ARTICLE II.

Bonus Awards

SECTION 2.1 *Participants; Bonus Awards.* The Committee may, in its discretion, grant bonus awards (Bonus Award) under the Plan with regard to any specified Performance Period to one or more of the Eligible Individuals. At the time a Bonus Award is granted pursuant to this Section 2.1, the Committee shall specify a bonus amount (Bonus Amount) to be paid upon the achievement of the Performance Goals established in accordance Section 2.2, which Bonus Amount may be a specific dollar amount, or a specified percentage of the Participant s Base Compensation for the Performance Period, subject to Section 2.4.

SECTION 2.2 *Performance Goals.*

(a) For each Performance Period with regard to which one or more Eligible Individuals is selected by the Committee to receive a Bonus Award under the Plan, the Committee shall establish in writing one or more objectively determinable performance goals (Performance Goals) for such Bonus Award, based upon one or more of the following business criteria, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to the results of a peer group:

revenue;

sales;

cash flow;

earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization);

earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization) per share of Common Stock;

operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization);

operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization) per share of Common Stock;

return on equity;

total stockholder return;

return on capital;

return on assets or net assets;

income or net income;

operating profit or net operating profit;

operating margin;

cost reductions or savings;

end of period customers, or change in customers across a period;

working capital;

market share; and

Fair Market Value per share of Common Stock.

(b) With respect to any Bonus Award which the Committee determines should constitute qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder, the applicable Performance Goals specified pursuant to Section 2.2 (including any adjustments specified pursuant to Section 2.3) shall be established in writing no later than the ninetieth day following the

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commencement of the period of service to which the Performance Goals relate; provided, however, that in no event shall the Performance Goals be established after 25% of the period of service (as scheduled in good faith at the time the Performance Goals are established) has elapsed. The achievement of any Performance Goals established by the Committee shall be substantially uncertain at the time such Performance Goals are established in writing.

(c) Depending on the business criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance, Subsidiary performance or the performance of a division or business unit of the Company and/or the Subsidiaries. The Committee may, in its discretion, specify different Performance Goals for each Bonus Award granted under the Plan. The Committee shall, within the time prescribed by Section 162(m) of the Code, define in an objective fashion the manner of determining whether and to what extent the specified Performance Goal has been achieved for the Performance Period; provided, however, that, subject to Section 2.3, the achievement of each Performance Goal shall be determined in accordance with United States generally accepted accounting principles (GAAP) to the extent applicable.

SECTION 2.3 *Adjustments to Performance Components.* For each Bonus Award granted under the Plan, the Committee may, in its discretion, at the time of grant, specify in the Bonus Award that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals established under Section 2.2. Such adjustments may include or exclude one or more of the following:

items related to a change in accounting principle;

items related to financing activities;

expenses for restructuring or productivity initiatives;

other non-operating items;

items related to acquisitions;

items attributable to the business operations of any entity acquired by the Company during the Plan Year;

items related to dispositions;

items that relate to the launch of one or more new markets or the disposition of one or more markets;

items related to discontinued operations that do not qualify as a segment of a business under GAAP;

items related to gain or loss on sale of wireless licenses and/or operating assets;

items related to impairment of indefinite-lived intangible assets;

items related to impairment of long-lived assets and related charges; and

share-based compensation expense.

The amount of any objectively determinable adjustment made pursuant to this Section 2.3 shall be determined in accordance with GAAP to the extent applicable.

SECTION 2.4 *Award Limit.* The maximum aggregate amount of all bonus awards granted to a Participant under this Plan with regard to any Plan Year shall not exceed $1,500.000.

SECTION 2.5 *Other Incentive Awards.* The Plan shall not be the exclusive means for the Committee to award incentive compensation to Participants. No employee of the Company or any Subsidiary has a guaranteed right to any discretionary bonus as a substitute for a bonus award under this Plan in the event that Performance Goals are not met or that the Company s stockholders fail to approve or reapprove the Plan.

ARTICLE III.

Payment of Bonus Award

SECTION 3.1 *Form of Payment.* Each Participant s Bonus Award shall be paid in cash, subject to any applicable tax or other withholding.

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SECTION 3.2 *Certification; Timing of Payment.*

(a) Prior to the payment of any Bonus Award, the Committee shall certify in writing the level of performance attained (relative to the applicable Performance Goals determined pursuant to Section 2.2 (including any adjustments under Section 2.3)) for the Performance Period to which such Bonus Award relates.

(b) Bonus Award payments shall be made following the close of the Performance Period as soon as practicable after the review and certification by the Committee of the applicable performance upon which the Bonus Award payment is based.

(c) Bonus Award payments are not intended to constitute a deferral of compensation subject to Section 409A of the Code and are intended to satisfy the short-term deferral exemption under the Treasury Regulations pursuant to Section 409A of the Code. Subject to subsection 3.2(b), and to the extent necessary to cause the Bonus Award to satisfy the short-term deferral exemption under the Treasury Regulations pursuant to Section 409A of the Code, a Bonus Award payment shall be made not later than the later of (i) the fifteenth day of the third month following the Participant s first taxable year in which the Bonus Amount is no longer subject to a substantial risk of forfeiture, or (ii) the fifteenth day of the third month following the Company s first taxable year in which the Bonus Award is no longer subject to a substantial risk of forfeiture.

SECTION 3.3 *Negative Discretion.* The Committee may, in its discretion, reduce or eliminate the Bonus Amount otherwise payable to any Participant under a Bonus Award. Any such reduction or elimination may be made based on such objective or subjective determinations as the Committee determines appropriate.

SECTION 3.4 *Terminations.* If a Participant s employment with the Company and the Subsidiaries is terminated for any reason other than death or disability prior to payment of any Bonus Award, all of the Participant s rights under the Plan shall terminate and the Participant shall not have any right to receive any further payments with respect to any Bonus Award granted under the Plan. The Committee may, in its discretion, determine what portion, if any, of the Participant s Bonus Award under the Plan shall be paid if the Participant s employment has been terminated by reason of death or disability.

ARTICLE IV.

Administration

SECTION 4.1 *Committee.*

(a) The Committee shall consist solely of two or more Directors appointed by and holding office at the pleasure of the Board, each of whom constitutes an outside director within the meaning of Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder.

(b) Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee shall be filled by the Board.

SECTION 4.2 *Duties and Powers of Committee.* It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan, except with respect to matters which under Section 162(m) of the Code are required to be determined in the sole and absolute discretion of the Committee.

SECTION 4.3 *Determinations of the Committee or the Board.* All actions taken and all interpretations and determinations made by the Committee or the Board in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No members of the Committee or the Board shall be personally liable for any action, inaction, determination or interpretation made in good faith with respect to the Plan or any Bonus Award, and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation.

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SECTION 4.4 *Majority Rule; Unanimous Written Consent.* The Committee shall act by a majority of its members in office. The Committee may act either by majority vote at a meeting or by a memorandum or other written instrument signed by all of the members of the Committee.

ARTICLE V.

Other Provisions

SECTION 5.1 *Qualified Performance Based Compensation.* The Committee may, in its discretion, determine whether a Bonus Award should qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder and may take such actions as it may deem necessary to ensure that such Bonus Award will so qualify.

SECTION 5.2 *Amendment, Suspension or Termination of the Plan.* This Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, with respect to Bonus Awards which the Committee determines should constitute qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder, no action of the Board or the Committee may modify the Performance Goals (or adjustments) applicable to any outstanding Bonus Award, to the extent such modification would cause the Bonus Award to fail to constitute qualified performance-based compensation.

SECTION 5.3 *Effective Date.* This Plan shall be effective upon approval by the Board (the Plan Effective Date), subject to stockholder approval. The Committee may grant Bonus Awards under the Plan at any time on or after the Plan Effective Date; provided, however, that no Bonus Award payment shall be made prior to the approval of the Plan in accordance with Section 5.4.

SECTION 5.4 *Approval of Plan by Stockholders.*

(a) This Plan shall be submitted for the approval of the Company s stockholders at the annual meeting of stockholders to be held in 2007. In the event that this Plan is not so approved, this Plan shall cease to be effective and no payment shall be made with respect to any Bonus Award granted under the Plan.

(b) This Plan shall be subject to reapproval by the stockholders of the Company not later than the first stockholder meeting that occurs in the fifth year following the year in which the stockholders last approved this Plan, as required under the Treasury Regulations pursuant to Section 162(m) of the Code. In the event that this Plan is not so reapproved, no further Bonus Awards shall be granted under this Plan on or after the date of such stockholder meeting and any outstanding Bonus Award shall be paid in accordance with the terms and conditions of this Plan and such Bonus Award.

SECTION 5.5 *Tax Withholding.* The Company shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes required by law to be withheld with respect to any taxable event concerning a Participant arising in connection with a Bonus Award granted under this Plan.

SECTION 5.6 *Miscellaneous.*

(a) In no event shall the Company be obligated to pay to any Participant a Bonus Award for a Performance Period by reason of the Company s payment of a Bonus Award to such Participant in any other Performance Period.

(b) The rights of Participants under the Plan shall be unfunded and unsecured. Amounts payable under the Plan are not and will not be transferred into a trust or otherwise set aside. Neither the Company nor any Subsidiary shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Bonus Award under the Plan.

(c) The Company intends that certain Bonus Awards payable under the Plan shall satisfy and shall be interpreted in a manner that satisfies any applicable requirements as qualified performance-based compensation within the meaning of Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder. To the extent Bonus Awards under the Plan are intended to qualify as performance-based

compensation, within the meaning of Section 162(m)(4)(C) of the Code and the Treasury Regulations thereunder, any provision, application or interpretation of the Plan that is inconsistent with this intent shall be disregarded with respect to Bonus Awards intended to qualify as performance-based compensation, within the meaning of Section 162(m)(4)(C) of the Code.

(d) Nothing contained herein shall be construed as a contract of employment or deemed to give any Participant the right to be retained in the employ of the Company or any Subsidiary, or to interfere with the rights of the Company or any Subsidiary to discharge any individual at any time, with or without cause, for any reason or no reason, and with or without notice except as may be otherwise agreed in writing.

(e) No rights of any Participant to payments of any amounts under the Plan shall be sold, exchanged, transferred, assigned, pledged, hypothecated or otherwise disposed of other than by will or by laws of descent and distribution, and any such purported sale, exchange, transfer, assignment, pledge, hypothecation or disposition shall be void.

(f) Any provision of the Plan that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Plan.

(g) The Plan and the rights and obligations of the parties to the Plan shall be governed by, and construed and interpreted in accordance with, the law of the State of California (without regard to principles of conflicts of law).

* * *

LEAP WIRELESS INTERNATIONAL, INC.

/s/ ROBERT J. IRVING, JR.
By: Robert J. Irving, Jr., Senior Vice President, General Counsel and Secretary

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APPENDIX C

FOURTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

THIS FOURTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC. (this Amendment), dated as of April 23, 2012, is made and adopted by LEAP WIRELESS INTERNATIONAL, INC., a Delaware corporation (the Company). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, the Company maintains The 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan of Leap Wireless International, Inc. (as amended to date, the Plan);

WHEREAS, the Company desires to amend the Plan as set forth below;

WHEREAS, pursuant to Section 10.2 of the Plan, the Plan may be amended by the Board of Directors of the Company;

WHEREAS, the Board of Directors of the Company approved a previous fourth amendment to the Plan pursuant to resolutions adopted on April 3, 2012, which fourth amendment has been superseded by this Amendment; and

WHEREAS, this Amendment was approved on April 23, 2012.

NOW, THEREFORE, in consideration of the foregoing, the Company hereby amends the Plan as follows:

1. Section 1.2 is hereby amended to read as follows:

1.2. Award shall mean an Option, a Stock Appreciation Right (a SAR), a Restricted Stock award, a Deferred Stock Unit award or a Cash Award granted or awarded under the Plan.

2. Section 1.4 is hereby amended to read as follows:

1.4. Award Limit shall mean, with respect to an Award denominated in shares of Common Stock, 1,500,000 shares of Common Stock, as adjusted pursuant to Section 10.3, and, with respect to an Award denominated in cash, $2,000,000.

3. Section 1.29 is hereby amended to read as follows:

1.29. Substitute Award shall mean an Option or a SAR granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; *provided*, *however*, that in no event shall the term Substitute Award be construed to refer to an award made in connection with the cancellation and repricing of an Option or a SAR.

4. The first sentence of Section 2.1(b) is hereby amended to read as follows:

Following the date the Plan is approved by the stockholders of the Company, subject to adjustment as provided in Section 10.3, the maximum number of shares of Common Stock (i) for Awards other than Options or SARs may be granted under the Plan to any individual in any calendar year shall not exceed the Award Limit and (ii) with respect to which Options and SARs may be granted under the Plan to any individual in any calendar year shall not exceed the Award Limit.

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5. Article VIII is hereby amended to read as follows:

ARTICLE VIII

AWARDING OF DEFERRED STOCK UNITS TO EMPLOYEES,

CONSULTANTS AND INDEPENDENT DIRECTORS

8.1. Eligibility. Deferred Stock Unit awards may be awarded to any Employee who the Administrator determines is a key Employee, any Independent Director or any Consultant who the Administrator determines should receive such an Award. A Deferred Stock Unit is an award denominated in shares of Common Stock that represents the right to receive, at the sole discretion of the Administrator, (a) shares of Common Stock, (b) cash, (c) other property, or (d) or a combination of shares of Common Stock, cash and/or other property, in accordance with this Article VIII.

8.2. Awards of Deferred Stock Units.

(a) The Administrator may from time to time, in its absolute discretion:

(i) Determine which Employees are key Employees and select from among the key Employees, Independent Directors or Consultants (including Employees, Independent Directors or Consultants who have previously received Awards under the Plan) which of them in its opinion should be awarded Deferred Stock Unit awards;

(ii) Determine the number of Deferred Stock Units to be awarded (subject to the Award Limit); and

(iii) Determine the terms and conditions applicable to such Deferred Stock Unit award, consistent with the Plan, including whether the Deferred Stock Unit award will be settled in (A) shares of Common Stock, (B) cash, (C) other property or (D) or a combination of shares of Common Stock, cash and/or other property.

(b) The Administrator shall establish the purchase price, if any, and form of payment for Deferred Stock Unit awards; *provided*, *however*, that such purchase price shall be no less than the par value of the Common Stock to be purchased, unless otherwise permitted by applicable state law.

(c) The Administrator shall determine the terms regarding the settlement of a Deferred Stock Unit award in the applicable Award Agreement and may provide that such terms are subject to a deferral election by the Employee, Independent Director or Consultant to whom such Award is to be or has been awarded in accordance with Section 8.5.

8.3. Settlement of Deferred Stock Units. The Deferred Stock Unit award will not be settled until the Deferred Stock Unit award has vested, pursuant to a vesting schedule or Performance Goals, in each case set by the Administrator and the settlement shall occur on the date or dates determined by the Administrator (the Settlement Date) and set forth in the applicable Award Agreement. The Deferred Stock Unit awards may, in the Administrator s sole discretion (at the time of granting the Award or at any time thereafter), be settled in (a) the delivery of shares of Common Stock or other property, (b) cash, (c) partially in cash and partially in the delivery of shares of Common Stock and/or other property, or (d) partially in the delivery of shares of Common Stock and partially in the delivery of other property. A settlement in cash or other property shall be based on the value of the shares of Common Stock that would otherwise have been delivered on the Settlement Date.

8.4. Rights as Stockholder. Unless otherwise provided by the Administrator in the applicable Award Agreement, a Holder of a Deferred Stock Unit shall have no rights as a Company stockholder with respect to the shares of Common Stock, if any, underlying such Deferred Stock Unit award until such time as the Award has vested and, to the extent that the Deferred Stock Unit is settled in shares of Common Stock, the shares of Common Stock underlying such Award have been delivered pursuant to the Deferred Stock Unit award.

8.5. Deferred Settlement. The Administrator may provide for the deferral of the settlement of a Deferred Stock Unit award at the election of the Employee, Independent Director or Consultant to whom the Award is to be or has been awarded in a manner consistent with the requirements of Section 409A of the Code.

8.6. Unfunded Obligations. Deferred Stock Units are unfunded and unsecured obligations of the Company, and nothing contained in the Plan or in any Award Agreement shall be construed as providing for assets to be held in trust or escrow or any other form of segregation of the assets of the Company for the benefit of the Holder of such Deferred Stock Units or any other person.

8.7. Conditions to Issuance of Shares of Common Stock. The Company shall not be required to issue or deliver any certificate or certificates for shares of Common Stock issuable pursuant to the terms of a Deferred Stock Unit award prior to fulfillment of all of the conditions set forth in Section 6.3.

8.8. Limitation on Settlement. Notwithstanding the provisions of Sections 8.2, 8.5, 10.2 and 10.3, Deferred Stock Unit awards shall be settled in accordance with the terms of the Plan and the applicable Award Agreement only to the extent the settlement of the outstanding Deferred Stock Units at such times or upon such events and under such terms will not cause the Award or amounts issuable or distributed in connection with the settlement of the Deferred Stock Unit award to be includable in the gross income of the Holder under Section 409A of the Code prior to such times or occurrence of such events, as permitted by Section 409A of the Code and the regulations and other guidance thereunder.

6. The first sentence of Section 9.5 is hereby amended to read as follows:

Subject to the terms and conditions of Article XIII hereof, the Board may, but need not, delegate from time to time some or all of its authority to grant Awards under the Plan to a committee consisting of one or more members of the Committee or of one or more officers of the Company; *provided*, *however*, that no such delegation may be made that would cause Awards or other transactions under this Plan to cease to be exempt from Section 16(b) of the Exchange Act or cause an Award designated as a Qualified Performance-Based Award not to qualify for, or to cease to qualify for, the Section 162(m) Exemption.

7. The following clause is hereby added as clause (iv) to Section 10.3(a):

(iv) The Performance Goals, provided that in the case of Performance Goals applicable to any Qualified Performance-Based Award, such adjustment does not violate Section 162(m) of the Code;

8. Section 10.3(d) is hereby amended to read as follows:

No such adjustment or action shall be authorized to the extent such adjustment or action would (i) result in short-swing profit liability under Section 16 or violate the exemptive conditions of Rule 16b-3 or (ii) in the case of Awards intended to qualify as Qualified Performance-Based Awards, violate Section 162(m) of the Code, in each case unless the Administrator determines that the Award is not to comply with such exemptive conditions.

9. A new Article XI is hereby added and it reads as follows:

ARTICLE XI

AWARDING OF STOCK APPRECIATION RIGHTS TO EMPLOYEES,

CONSULTANTS AND INDEPENDENT DIRECTORS

11.1 Eligibility. Subject to the Award Limit, any Employee, Consultant or Independent Director selected by the Administrator shall be eligible to be granted SARs. Each SAR shall be granted subject to terms and conditions determined by the Administrator that are not inconsistent with the Plan and are set forth in the applicable Award Agreement.

11.2 Nature of Stock Appreciation Rights. A SAR shall entitle the Holder to receive, upon exercise, a payment, in cash or shares of Common Stock, as described in Section 11.5, equal to the (a) the excess of (i) the Fair Market Value of a share of Common Stock on the date of exercise of a SAR, over (ii) the Exercise Price (as described below) of the SAR, times (b) the number of shares of Common Stock as to which it is being exercised. A SAR may be granted either with a related Option at the time the Option is originally granted or thereafter, or without a related Option.

11.3 Exercise Price. The Exercise Price of a SAR that does not have a related Option shall be determined by the Administrator on the date the SAR is granted, *provided* that, except in connection with a Substitute Award pursuant to Section 11.10, the Exercise Price shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant . The Exercise Price of a SAR that has a related Option shall

equal the Option price of the related Option.

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11.4 Grant with Related Option. A SAR that is granted with a related Option shall be subject to the same terms and conditions as the Option, shall be exercisable only to the extent its related Option is exercisable, and shall terminate or be forfeited and cease to be exercisable when the term of the related Option expires or the related Option is forfeited.

11.5 Form of Payment. The Administrator shall determine, in each case, whether the payment to a Holder upon exercise of a SAR will be in the form of all cash, all shares of Common Stock (which may be Restricted Shares) or any combination thereof. If payment is to be made in shares of Common Stock, the number of shares of Common Stock shall be equal to the amount of the payment, as described in the first sentence of Section 11.2, divided by the Fair Market Value of a share of Common Stock on the date of exercise.

11.6 Exercise of Stock Appreciation Rights. A SAR, or portion thereof, may be exercised during the period beginning on the date when it first becomes exercisable in accordance with its terms, and ending upon the expiration of its term or, if sooner, when it is forfeited as a result of a Termination of Employment, Termination of Consultancy, Termination of Directorship or otherwise in accordance with the terms and conditions of the SAR. Subject to the provisions of Section 11.7, the term of a SAR shall expire on such date, not later than the tenth anniversary of the date of grant of the SAR, as set forth in the applicable Award Agreement. The exercise of all or a portion of a SAR granted with a related Option shall result in the forfeiture of all or a corresponding portion of the related Option and vice versa. To exercise a SAR, a Holder shall give written notice complying with the applicable rules established by the Administrator stating that the SAR, or a portion thereof, is exercised. The notice shall specify the number of shares of Common Stock with respect to which the SAR is being exercised.

11.7 Effect of Termination of Employment, Termination of Consultancy or Termination of Directorship. The effect of a Holder s Termination of Employment, Termination of Consultancy or Termination of Directorship on any SAR then held by the Holder, to the extent it has not previously expired or been exercised, shall be set forth in the applicable Award Agreement. Notwithstanding anything in any Award Agreement to the contrary, in no event shall a SAR be exercisable after the expiration of its term.

11.8 Conditions to Issuance of Shares of Common Stock. The Company shall not be required to issue or deliver any certificate or certificates for shares of Common Stock in connection with the exercise of a SAR that is settled in shares of Common Stock prior to fulfillment of all of the conditions set forth in Section 6.3.

11.9 No Obligation to Exercise Stock Appreciation Right. The granting of a SAR shall impose no obligation upon the Holder or upon a beneficiary of a Holder to exercise such SAR.

11.10 Substitute Awards. Notwithstanding any of the foregoing provisions of this Article XI to the contrary, in the case of a SAR that is a Substitute Award, the price per share of the shares subject to such SAR may be less than the Fair Market Value per share on the date of grant, *provided*, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award; over (b) the aggregate exercise price thereof, does not exceed the excess of: (c) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company; over (d) the aggregate exercise price of such shares.

10. A new Article XII is hereby added and it reads as follows:

ARTICLE XII

AWARDING OF CASH AWARDS TO EMPLOYEES

12.1 Award. An Award may be denominated in cash (a Cash Award). Each Cash Award shall be granted subject to such terms and conditions, if any, not inconsistent with this Plan, as such shall be determined by the Administrator and set forth in the applicable Award Agreement, including but not limited to any provisions as to continued employment or continued service, performance conditions and any other provisions that may be advisable to comply with applicable laws, regulations or rulings of any governmental authority.

12.2 Eligibility. Cash Awards may be granted to any Employee who the Administrator determines is a key Employee.

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12.3 Performance-Based Cash Award Limitations. Cash Awards that are Qualified Performance-Based Awards shall be subject to the provisions of Article XIII hereof. In addition, no Holder may be granted Cash Awards that are Qualified Performance-Based Awards that have an aggregate maximum payment value in any calendar year in excess of the Award Limit.

11. A new Article XIII is hereby added and it reads as follows:

ARTICLE XIII

QUALIFIED PERFORMANCE-BASED AWARDS

13.1 The provisions of this Plan are intended to ensure that all Options and SARs granted hereunder to any Employee who is or may be a covered employee (within the meaning of Section 162(m)(3) of the Code) in the tax year in which such Option or SAR is expected to be deductible to the Company qualify for the Section 162(m) Exemption, and, unless otherwise determined by the Administrator, all such Awards shall therefore be considered Qualified Performance-Based Awards and this Plan shall be interpreted and operated consistent with that intention (including, without limitation, to require that all such Awards be granted by a committee composed solely of members who satisfy the requirements for being outside directors for purposes of the Section 162(m) Exemption (Outside Directors)). When granting any Award other than an Option or SAR, the Administrator may designate such Award as a Qualified Performance-Based Award, based upon a determination that (i) the recipient is or may be a covered employee (within the meaning of Section 162(m)(3) of the Code) with respect to such Award, and (ii) the Administrator wishes such Award to qualify for the Section 162(m) Exemption, and the terms of any such Award (and of the grant thereof) shall be consistent with such designation (including, without limitation, that all such Awards be granted by a committee composed solely of Outside Directors). To the extent required to comply with the Section 162(m) Exemption, no later than 90 days following the commencement of a Performance Period or, if earlier, by the expiration of 25% of a Performance Period, the Administrator will designate one or more Performance Periods, determine the Employees for the Performance Periods and establish the Performance Goals for the Performance Periods.

13.2 Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and/or payable (as applicable) upon the achievement of one or more Performance Goals, together with the satisfaction of any other conditions, such as continued employment, as the Administrator may determine to be appropriate.

13.3 The following terms shall have the following meaning for the purposes of this Article XIII:

(a) Performance Adjustments means the adjustments that the Administrator may, in its discretion, at the time of grant of a Qualified Performance-Based Award, specify in the applicable Award Agreement that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals. Such adjustments may include or exclude one or more of the following: items related to a change in accounting principle; items related to financing activities; expenses for restructuring or productivity initiatives; other non-operating items; items related to acquisitions; items attributable to the business operations of any entity acquired by the Company during the year; items related to dispositions; items related to the launch of one or more new markets or the disposition of one or more markets; items related to discontinued operations that do not qualify as a segment of a business under GAAP; items related to gain or loss on sale of wireless licenses and/or operating assets; items related to impairment of indefinite-lived intangible assets; items related to impairment of long-lived assets and related charges; and share-based compensation expense.

(b) Performance Goals means the performance objectives established by the Administrator in connection with the grant of Awards. In the case of Qualified Performance-Based Awards, (A) such goals shall be based on the attainment of specified levels of one or more of the following measures: revenue; sales; cash flow; earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization); earnings (including earnings before any one or more of the following: (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization) per share of Common Stock; operating income (including operating income before any one or more of the following: (i) depreciation and (ii) amortization); operating income (including operating income before any one or more of the following:

(i) depreciation and (ii) amortization) per share of Common Stock; return on equity; total stockholder return; return on capital; return on assets or net assets; income or net income; operating profit or net operating profit; operating margin; cost reductions or savings; end of period customers or change in customers across a period; working capital; market share; and fair market value per share of Common Stock in each case with respect to the Company or any one or more Subsidiaries, divisions, business units or business segments thereof, either in absolute terms or relative to the performance of one or more other companies (including an index covering multiple companies) and (B) such Performance Goals shall be set by the Administrator within the time period prescribed by Section 162(m) of the Code.

(c) Performance Period means that period established by the Administrator at the time any applicable Qualified Performance-Based Award is granted or at any time thereafter during which any Performance Goals specified by the Administrator with respect to such Award are to be measured.

(d) Qualified Performance-Based Award means an Award intended to qualify for the Section 162(m) Exemption, as provided in this Article XIII.

(e) Section 162(m) Exemption means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code.

12. This Amendment shall be and is hereby incorporated in and forms a part of the Plan. All other terms and provisions of the Plan shall remain unchanged except as specifically modified herein. The Plan, as amended by this Amendment, is hereby ratified and confirmed.

I hereby certify that the foregoing Amendment was duly adopted on April 23, 2012.

By: /s/ Robert J. Irving, Jr.
Name: Robert J. Irving, Jr.
Title: Senior Vice President and General Counsel

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APPENDIX D

FIFTH AMENDMENT TO

THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK

UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

THIS FIFTH AMENDMENT TO THE 2004 STOCK OPTION, RESTRICTED STOCK AND DEFERRED STOCK UNIT PLAN OF LEAP WIRELESS INTERNATIONAL, INC. (this Amendment), dated as of April 25, 2012, is made and adopted by LEAP WIRELESS INTERNATIONAL, INC., a Delaware corporation (the Company). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, the Company maintains The 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan of Leap Wireless International, Inc. (as amended to date, the Plan);

WHEREAS, the Company desires to amend the Plan as set forth below;

WHEREAS, pursuant to Section 10.2 of the Plan, the Plan may be amended by the Board of Directors of the Company; and

WHEREAS, this Amendment was approved on April 25, 2012.

NOW, THEREFORE, in consideration of the foregoing, the Company hereby amends the Plan as follows:

1. The first two sentences of Section 2.2 are hereby amended to read as follows:

If any Award expires, terminates, or is canceled or surrendered (for no consideration) without being exercised or settled, the number of shares of Common Stock subject to such Award but as to which such Award was not exercised or settled prior to its expiration, termination, cancellation or surrender, as applicable, may again be awarded hereunder, subject to the limitations of Section 2.1. Consistent with the foregoing, if any shares of Restricted Stock are forfeited or surrendered by the Holder or repurchased by the Company pursuant to Section 7.4 or 7.5 hereof, such shares of Common Stock may again be granted or awarded hereunder, subject to the limitations of Section 2.1.

2. This Amendment shall be and is hereby incorporated in and forms a part of the Plan. All other terms and provisions of the Plan shall remain unchanged except as specifically modified herein. The Plan, as amended by this Amendment, is hereby ratified and confirmed.

I hereby certify that the foregoing Amendment was duly adopted on April 25, 2012.

By: /s/ Robert J. Irving, Jr.
Name: Robert J. Irving, Jr.
Title: Senior Vice President and General Counsel

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APPENDIX E

TAX BENEFIT PRESERVATION PLAN

Tax Benefit Preservation Plan, dated as of August 30, 2011 (this *Plan*), between Leap Wireless International, Inc., a Delaware corporation (the *Company*), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the *Rights Agent*).

RECITALS

WHEREAS, on August 30, 2011, the Board of Directors (the *Board*) of the Company adopted this Plan, and has authorized and declared a dividend of one preferred stock purchase right (a *Right*) for each share of Common Stock (as defined in Section 1.6) of the Company outstanding at the close of business on September 12**,** 2011 (the *Record Date*) and has authorized and directed the issuance of one Right (subject to adjustment as provided herein) with respect to each share of Common Stock that shall become outstanding between the Record Date and the earliest of the Distribution Date and the Expiration Date (as such terms are defined in Sections 3.1 and 7.1, respectively), each Right initially representing the right to purchase one one-thousandth (subject to adjustment) of a share of Series A Junior Participating Preferred Stock, par value $.0001 per share (the *Preferred Stock*), of the Company having the rights, powers and preferences set forth in the form of Certificate of Designations of Series A Junior Participating Preferred Stock attached hereto as Exhibit A (as amended from time to time), upon the terms and subject to the conditions hereinafter set forth, *provided, however,* that Rights may be issued with respect to shares of Common Stock that shall become outstanding after the Distribution Date and prior to the Expiration Date in accordance with Section 22;

WHEREAS, if the Company experiences an ownership change, as defined in Section 382 of the Internal Revenue Code of 1986, as amended (the *Code*), its ability to use net operating losses and certain other tax attributes (collectively, *NOLs*) for income tax purposes could be substantially limited or lost altogether; and

WHEREAS, the Company views its NOLs as a valuable asset of the Company, which is likely to inure to the benefit of the Company and its shareholders, and the Company believes that it is in the best interests of the Company and its shareholders that the Company provide for the protection of the Company s NOLs on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Plan, the following terms have the meanings indicated:

1.1. *Acquiring Person* shall mean any Person who or which, from and after the date of this Plan, shall be the Beneficial Owner of 4.99% or more of the Common Stock then outstanding, but shall not include (i) an Exempt Person; and (ii) any Existing Holder, unless and until such time as such Existing Holder shall become the Beneficial Owner of one or more additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock in Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), unless upon acquiring such Beneficial Ownership, such Existing Holder does not Beneficially Own 4.99% or more of the Common Stock then outstanding. Notwithstanding the foregoing, no Person shall become an Acquiring Person as the result of (x) an acquisition of Common Stock by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares Beneficially Owned by such Person to 4.99% or more of the Common Stock then outstanding, *provided, however*, that if a Person shall become the Beneficial Owner of 4.99% or more of the Common Stock then outstanding solely by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of one or more additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock in Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), then such Person shall be deemed to be an Acquiring Person unless, upon becoming the Beneficial Owner of such additional Common Stock, such Person does not Beneficially Own 4.99% or more of the Common Stock then outstanding, or (y) the acquisition of Common Stock upon the exercise of any options, warrants or other rights, or

upon the initial grant or vesting of restricted stock, in each case, granted by the Company to its directors or officers. Notwithstanding the foregoing, if the Board determines in good faith that a Person who would otherwise be an Acquiring Person, as defined pursuant to the foregoing provisions of this Section 1.1, has become such inadvertently (including, without limitation, because (A) such Person was unaware that it Beneficially Owned a percentage of Common Stock that would otherwise cause such Person to be an Acquiring Person or (B) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Plan), and such Person divests as promptly as practicable a sufficient number of shares of Common Stock so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this Section 1.1, then such Person shall not be deemed to be or have become an Acquiring Person at any time for any purposes of this Plan. For all purposes of this Plan, any calculation of the number of shares of Common Stock outstanding at any particular time, for purposes of determining the particular percentage of such outstanding Common Stock of which any Person is the Beneficial Owner, shall be made pursuant to and in accordance with Section 382 of the Code and the Treasury Regulations promulgated thereunder.

1.2. *Affiliate* shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), as in effect on the date of this Plan and, to the extent not included within the foregoing, will also include, with respect to any Person, any other Person whose shares of Common Stock would be deemed constructively owned or that otherwise would be aggregated with shares owned by such Person pursuant to Section 382 of the Code, or any successor provision or replacement provision and the Treasury Regulations thereunder; *provided*, *however*, that a Person will not be deemed to be the Affiliate or Associate of another Person solely because either or both are or were officers or members of the Board of Directors of the Company.

1.3. *Associate* shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Plan.

1.4. A Person shall be deemed the *Beneficial Owner* of and shall be deemed to *Beneficially Own* or have *Beneficial Ownership* of any securities:

1.4.1. which such Person, directly or indirectly, has the Right to Acquire; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own (w) securities (including rights, options or warrants) which are convertible or exchangeable into or exercisable for Common Stock until such time as such securities are converted or exchanged into or exercised for Common Stock except to the extent the acquisition or transfer of securities (including rights, options or warrants) would be treated as exercised on the date of its acquisition or transfer under Section 1.382-4(d) of the Treasury Regulations promulgated under Section 382 of the Code; (x) securities tendered pursuant to a tender or exchange offer made by such Person until such tendered securities are accepted for purchase or exchange; (y) securities which such Person has a Right to Acquire upon the exercise of Rights at any time prior to the time that any Person becomes an Acquiring Person, or (z) securities issuable upon the exercise of Rights from and after the time that any Person becomes an Acquiring Person if such Rights were acquired by such Person prior to the Distribution Date or pursuant to Section 3.1 or Section 22 (*Original Rights*) or pursuant to Section 11.9 or Section 11.15 with respect to an adjustment to Original Rights;

1.4.2. which such Person, directly or indirectly, has or shares the right to vote or dispose of, or otherwise has beneficial ownership of (as defined under Rule 13d-3 of the General Rules and Regulations under the Exchange Act), provided, however, that Beneficial Ownership arising solely as a result of any such Person s participation in a group (within the meaning of Rule 13d-5(b) of the General Rules and Regulations under the Exchange Act) shall be determined under Section 1.4.3 of this Agreement and not under this Section 1.4.2;

1.4.3. of which any other Person is the Beneficial Owner, if such Person has any agreement, arrangement or understanding (whether or not in writing) with such other Person with respect to acquiring, holding, voting or disposing of such securities of the Company, but only if the effect of such agreement, arrangement or understanding is to treat such Persons as an entity under Section 1.382-3(a)(1) of the Treasury Regulations; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, any security (A) if such Person has the right to vote such security pursuant to an agreement, arrangement or understanding (whether or not in writing) which (1) arises solely from a revocable proxy given to such Person in

response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations of the Exchange Act and (2) is not also then reportable on Schedule 13D or Schedule 13G under the Exchange Act (or any comparable or successor report), or (B) if such beneficial ownership arises solely as a result of such Person s status as a clearing agency, as defined in Section 3(a)(23) of the Exchange Act; provided, further, that nothing in this Section 1.4.3 shall cause a Person engaged in business as an underwriter of securities or member of a selling group to be the Beneficial Owner of, or to Beneficially Own, any securities acquired through such Person s participation in good faith in an underwriting syndicate until the expiration of 40 calendar days after the date of such acquisition, or such later date as the Board of the Company may determine in any specific case;

Notwithstanding anything herein to the contrary, to the extent not within the foregoing provisions of this Section 1.4, a Person shall be deemed the Beneficial Owner of, and shall be deemed to Beneficially Own, securities held by any other Person that such Person would be deemed to constructively own or that otherwise would be aggregated with shares owned by such Person pursuant to Section 382 of the Code, or any successor provision or replacement provision and the Treasury Regulations thereunder.

No Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person s status or authority as such, to be the Beneficial Owner of, to have Beneficial Ownership of or to Beneficially Own any securities that are Beneficially Owned (as defined in this Section 1.4), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

1.5. *Business Day* shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York or the State of New Jersey are authorized or obligated by law or executive order to close.

1.6. *close of business* on any given date shall mean 5:00 p.m., New York time, on such date; *provided, however,* that if such date is not a Business Day it shall mean 5:00 p.m., New York time, on the next succeeding Business Day.

1.7. *Common Stock* when used with reference to the Company shall mean the Common Stock, par value $.0001 per share, of the Company. Common Stock when used with reference to any Person other than the Company shall mean the capital stock with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such other Person or, if such Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person, and which has issued and outstanding such capital stock, equity securities or equity interest.

1.8. *Exempt Person* shall mean (i) the Company, any Subsidiary of the Company, in each case including, without limitation, the officers and members of the boards of directors thereof acting in their fiduciary capacities, or any employee benefit plan of the Company or of any Subsidiary of the Company or any entity or trustee holding shares of capital stock of the Company for or pursuant to the terms of any such plan, or for the purpose of funding other employee benefits for employees of the Company or any Subsidiary of the Company, and (ii) any Person deemed to be an Exempt Person in accordance with Section 28.

1.9. *Existing Holder* shall mean any Person who, immediately prior to the first public announcement of the adoption of this Plan, is the Beneficial Owner of 4.99% or more of the Common Stock then outstanding.

1.10. *Person* shall mean any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity, or a group of Persons making a coordinated acquisition of shares or otherwise treated as an entity within the meaning of Section 1.382-3(a)(1) of the Treasury Regulations, and shall include any successor (by merger or otherwise) of any such entity, as well any group under Rule 13d-5(b)(2) of the Exchange Act, but shall not include a Public Group (as such term is defined in Section 1.382-2T(f)(13) of the Treasury Regulations).

1.11. *Right to Acquire* shall mean a legal, equitable or contractual right to acquire (whether directly or indirectly and whether exercisable immediately, or only after the passage of time, compliance with regulatory requirements, fulfillment of a condition or otherwise), pursuant to any agreement, arrangement or understanding,

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whether or not in writing (excluding customary agreements entered into in good faith with and between an underwriter and selling group members in connection with a firm commitment underwriting registered under the Securities Act of 1933, as amended (the *Securities Act*), or upon the exercise of any option, warrant or right, through conversion of a security, pursuant to the power to revoke a trust, discretionary account or similar arrangement, pursuant to the power to terminate a repurchase or similar so-called stock borrowing agreement or arrangement, or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

1.12. *Stock Acquisition Date* shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, the filing of a report pursuant to Section 13(d) of the Exchange Act or pursuant to a comparable successor statute) by the Company or an Acquiring Person that an Acquiring Person has become such or that discloses information which reveals the existence of an Acquiring Person or such earlier date as a majority of the Board shall become aware of the existence of an Acquiring Person.

1.13. *Subsidiary* of any Person shall mean any partnership, joint venture, limited liability company, firm, corporation, unincorporated association, trust or other entity of which a majority of the voting power of the voting equity securities or equity interests is owned, of record or beneficially, directly or indirectly, by such Person.

1.14. A *Trigger Event* shall be deemed to have occurred upon any Person becoming an Acquiring Person.

1.15. The following terms shall have the meanings defined for such terms in the Sections set forth below:

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Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company in accordance with the express terms and conditions set forth herein (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-rights agents as it may deem necessary or desirable, upon 10 days prior written notice to the Rights Agent. In the event the Company appoints one or more co-rights agents, the respective duties of the Rights Agent and any co-rights agent shall be as the Company shall determine; provided, however, that the Rights Agent shall have no duty to supervise, and shall in no event be liable for, the acts or omissions of any such co-rights agent.

Section 3. Issuance of Right Certificates.

3.1. Rights Evidenced by Stock Certificates. Until the earlier of (i) the close of business on the tenth (10^{th}) Business Day after the Stock Acquisition Date or (ii) the close of business on the tenth (10^{th}) Business Day after the date of the commencement of, or first public announcement of the intent of any Person (other than an Exempt Person) to commence, a tender or exchange offer the consummation of which would result in any Person (other than an Exempt Person) becoming the Beneficial Owner of Common Stock aggregating 4.99% or more of the then outstanding Common Stock (the earlier of (i) and (ii) being herein referred to as the *Distribution Date*), (x) the Rights (unless earlier expired, redeemed or terminated) will be evidenced (subject to the provisions of Section 3.2) by the certificates representing the Common Stock registered in the names of the holders thereof or, in the case of uncertificated shares of Common Stock registered in book entry form (*Book Entry Shares*), by notation in book entry (which certificates for Common Stock and Book Entry Shares shall also be deemed to be Right Certificates) and not by separate certificates, and (y) the Rights (and the right to receive certificates therefor) will be transferable only in connection with the transfer of the underlying Common Stock. The preceding sentence notwithstanding, (A) prior to the occurrence of a Distribution Date specified as a result of an event described in clauses (i) or (ii) (or such later Distribution Date as the Board may select pursuant to this sentence), the Board may postpone, one or more times, the Distribution Date in order to make a determination pursuant to Section 7.1(v) or (B) prior to the occurrence of a Distribution Date specified as a result of an event described in clause (ii) (or such later Distribution Date as the Board may select pursuant to this sentence), the Board may postpone, one or more times, the Distribution Date which would occur as a result of an event described in clause (ii) beyond the date set forth in such clause (ii). Nothing herein shall permit such a postponement of a Distribution Date after a Person becomes an Acquiring Person, except as a result of the operation of the third sentence of Section 1.1. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Company (or, if requested and provided with all necessary information and documents, the Rights Agent) will send, by first-class, postage-prepaid mail, to each record holder of Common Stock as of the close of business on the Distribution Date (other than any Acquiring Person), at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock, one or more certificates for Rights, in substantially the form of Exhibit B hereto (a *Right Certificate*), evidencing one Right (subject to adjustment as provided herein) for each share of Common Stock so held. As of and after the Distribution Date, the Rights will be evidenced solely by such Right Certificates. The Company shall promptly notify the Rights Agent in writing upon the occurrence of the Distribution Date and, if such notification is given orally, the Company shall confirm same in writing on or prior to the Business Day next following. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Distribution Date has not occurred.

3.2. Summary of Rights. On the Record Date or as soon as practicable thereafter, the Company will send or cause to be sent a copy of a Summary of Rights to Purchase Preferred Stock, in substantially the form attached hereto as Exhibit C (the *Summary of Rights*), by first-class, postage-prepaid mail, to each record holder of

Common Stock as of the close of business on the Record Date at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock. Any failure to send a copy of the Summary of Rights shall not invalidate the Rights or affect their transfer with the Common Stock. With respect to certificates representing Common Stock and Book Entry Shares outstanding as of the close of business on the Record Date, until the Distribution Date (or the earlier Expiration Date), the Rights will be evidenced by such certificates for Common Stock registered in the names of the holders thereof or Book Entry Shares, as applicable, together with a copy of the Summary of Rights and the registered holders of the Common Stock shall also be registered holders of the associated Rights. Until the Distribution Date (or the earlier Expiration Date), the surrender for transfer of any certificate for Common Stock or Book Entry Shares outstanding at the close of business on the Record Date, with or without a copy of the Summary of Rights, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby and the Book Entry Shares, as applicable.

3.3. New Certificates and Uncertificated Shares After Record Date. Certificates for Common Stock that become outstanding (whether upon issuance out of authorized but unissued Common Stock, disposition out of treasury or transfer or exchange of outstanding Common Stock) after the Record Date but prior to the earliest of the Distribution Date or the Expiration Date, shall have impressed, printed, stamped, written or otherwise affixed onto them a legend in substantially the following form:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in a Tax Benefit Preservation Plan between Leap Wireless International, Inc. (the *Company*) and Mellon Investor Services LLC, as Rights Agent, dated as of August 30, 2011, as the same may be amended from time to time (the *Plan*), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Plan, such Rights (as defined in the Plan) will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Plan without charge after receipt of a written request therefor. ***As described in the Plan, Rights which are owned by, transferred to or have been owned by Acquiring Persons (as defined in the Plan) shall become null and void and will no longer be transferable***.

With respect to any Book Entry Shares, such legend shall be included in a notice to the record holder of such shares in accordance with applicable law. Until the Distribution Date (or the earlier Expiration Date), the Rights associated with the Common Stock represented by such certificates and such Book Entry Shares shall be evidenced solely by such certificates or the Book Entry Shares alone, and the surrender for transfer of any such certificates or Book Entry Shares, except as otherwise provided herein, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby. In the event that the Company purchases or otherwise acquires any Common Stock after the Record Date but prior to the Distribution Date, any Rights associated with such Common Stock shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Stock that are no longer outstanding.

Notwithstanding this Section 3.3, neither the omission of the legend required hereby, nor the failure to provide the notice thereof, shall affect the enforceability of any part of this Plan or the rights of any holder of the Rights.

Section 4. Form of Right Certificates. The Right Certificates (and the forms of election to purchase shares and assignment, including the certifications therein, to be printed on the reverse thereof) shall each be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate (but which do not affect the rights, duties, liabilities or responsibilities of the Rights Agent) and as are not inconsistent with the provisions of this Plan, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or trading system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the terms and conditions hereof, the Right Certificates, whenever issued, shall be dated as of the Record Date, and shall show the date of countersignature by the Rights Agent, and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the price per one

one-thousandth of a share of Preferred Stock set forth therein (the *Purchase Price*), but the number of such one one-thousandths of a share of Preferred Stock and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. Countersignature and Registration. The Right Certificates shall be executed on behalf of the Company by the Chairman of the Board, or the President, the Chief Operating Officer, any Executive Vice President or any Senior Vice President of the Company, either manually or by facsimile signature, and shall have affixed thereto the Company s seal or a facsimile thereof, which shall be attested by the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Company or by such officers as the Board may designate, either manually or by facsimile signature. The Right Certificates shall be countersigned, either manually or by facsimile signature, by an authorized signatory of the Rights Agent, but it shall not be necessary for the same signatory to countersign all of the Right Certificates hereunder. No Right Certificate shall be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent, and issued and delivered by the Company with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Plan any such person was not such an officer.

Following the Distribution Date, receipt by the Rights Agent of written notice to that effect and all other necessary information and documents referred to in Section 3.2, the Rights Agent will keep or cause to be kept, at an office designated for such purpose, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates, the certificate number of each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates. Subject to the provisions of this Plan, including but not limited to Section 11.1.2 and Section 14, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date, any Right Certificate or Right Certificates (other than Right Certificates representing Rights that have become null and void pursuant to Section 11.1.2 or that have been exchanged pursuant to Section 27) may be transferred, split up or combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender, together with any required form of assignment and certificate duly executed and properly completed, the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the office of the Rights Agent designated for such purpose. The Right Certificates are transferable only on the registry books of the Rights Agent. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate or Right Certificates until the registered holder shall have (i) properly completed and duly executed the certificate contained in the form of assignment on the reverse side of such Right Certificate or Right Certificates, (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) of the Rights represented by such Right Certificate as the Company or the Rights Agent shall reasonably request, and (iii) paid a sum sufficient to cover any tax or charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates as required by Section 9 hereof. Thereupon, the Rights Agent, subject to the provisions of this Plan, shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Rights Agent shall forward any such sum collected by it to the Company or to such Persons as the Company shall specify by written notice. The Rights Agent shall have no duty or obligation under any Section of this Plan that requires the payment of taxes or charges unless and until it is satisfied that all such taxes and/or charges have been paid.

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Subject to the provisions of Section 11.1.2, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security satisfactory to them, and, at the Company s request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Notwithstanding any other provisions hereof, the Company and the Rights Agent may amend this Rights Agreement to provide for uncertificated Rights in addition to or in place of Rights evidenced by Rights Certificates.

Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.

7.1. Exercise of Rights. Subject to Section 11.1.2 and except as otherwise provided herein, the registered holder of any Right Certificate may exercise the Rights evidenced thereby in whole or in part at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase and certification on the reverse side thereof properly completed and duly executed, to the Rights Agent at the office of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price for the total number of one one-thousandths of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which the Rights are exercised and an amount equal to any tax or charge required to be paid under Section 9 hereof, at any time prior to the time (the *Expiration Date*) that is the earliest of (i) the close of business on August 31, 2014 (the *Final Expiration Date*), (ii) the time at which the Rights are redeemed as provided in Section 23 (the *Redemption Date*), (iii) the closing of any merger or other acquisition transaction involving the Company pursuant to an agreement of the type described in Section 13.3 at which time the Rights are deemed terminated, (iv) the time at which the Rights are exchanged as provided in Section 27, (v) the time at which the Board determines that the NOLs are utilized in all material respects or no longer available in any material respect under Section 382 of the Code or that an ownership change under Section 382 of the Code would not adversely impact in any material respect the time period in which the Company could use the NOLs, or materially impair the amount of the NOLs that could be used by the Company in any particular time period, for applicable tax purposes, or (vi) a determination by the Board, prior to the time any Person becomes an Acquiring Person, that the Plan and the Rights are no longer in the best interests of the Company and its stockholders. The Company shall promptly notify the Rights Agent in writing upon the occurrence of the Expiration Date and, if such notification is given orally, the Company shall confirm same in writing on or prior to the Business Day next following. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes, prior to the Final Expiration Date, that the Expiration Date has not occurred.

7.2. Purchase. The Purchase Price for each one one-thousandth of a share of Preferred Stock pursuant to the exercise of a Right shall be initially $60.00, shall be subject to adjustment from time to time as provided in Sections 11, 13 and 26 and shall be payable in lawful money of the United States of America in accordance with Section 7.3.

7.3. Payment Procedures. Except as otherwise provided herein, upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase and certification properly completed and duly executed, accompanied (subject to the following sentence) by payment of the aggregate Purchase Price for the total number of one one-thousandths of a share of Preferred Stock to be purchased and an amount equal to any applicable tax or charge required to be paid by the holder of such Right Certificate in accordance with Section 9 hereof, in cash or by certified or cashier s check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i)(A) requisition from any transfer agent of the Preferred Stock (or make available, if the Rights Agent is the transfer agent) certificates for the number of shares of Preferred Stock to be purchased and the Company hereby irrevocably authorizes each such transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depository agent, requisition from such depositary agent depositary receipts representing interests in such number of one one-thousandths of a share of Preferred Stock as

are to be purchased (in which case certificates for the Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depositary agent) and the Company hereby directs any such depositary agent to comply with all such requests, (ii) when necessary to comply with this Plan, requisition from the Company the amount of cash to be paid in lieu of the issuance of fractional shares in accordance with Section 14 hereof or otherwise in accordance with Section 11.1.3 hereof; (iii) after receipt of such certificates or depositary receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when necessary to comply with this Plan, after receipt of the cash requisitioned from the Company, deliver such cash to or upon the order of the registered holder of such Right Certificate. In the event that the Company is obligated to issue other securities of the Company, pay cash and/or distribute other property pursuant to Section 11.1.3 hereof, the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when necessary to comply with this Plan.

7.4. Partial Exercise. Except as otherwise provided herein, in case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the exercisable Rights remaining unexercised shall be issued by the Rights Agent and delivered to the registered holder of such Right Certificate or to his or her duly authorized assigns, subject to the provisions of Section 6 and Section 14 hereof.

7.5. Full Information Concerning Ownership. Notwithstanding anything in this Plan to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights or other securities upon the occurrence of any purported transfer or exercise of Rights pursuant to Section 6 hereof or as set forth in this Section 7 unless such registered holder shall have (i) properly completed and duly executed the certification contained in the form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such transfer or exercise, (ii) not indicated an affirmative response to clause 1 or 2 thereof, and (iii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) as the Company or the Rights Agent shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in respect or lieu thereof except as expressly permitted by any of the provisions of this Plan. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. Subject to applicable law, regulation and the Rights Agent s internal policies, the Rights Agent shall maintain in a retrievable database electronic records of all cancelled or destroyed Rights Certificates which have been cancelled or destroyed by the Rights Agent. The Rights Agent shall maintain such electronic records or physical records for the time period required by applicable law, regulation and the Rights Agent s internal policies. Subject to applicable law, regulation and the Rights Agent s internal policies, upon written request of the Company (and at the expense of the Company), the Rights Agent shall (i) destroy or cause to be destroyed such cancelled Rights Certificates, and/or (ii) provide to the Company or its designee copies of any such electronic records or physical records relating to Rights Certificates cancelled or destroyed by the Rights Agent.

Section 9. Reservation and Availability of Capital Stock. The Company covenants and agrees that, from and after the Distribution Date, it will cause to be reserved and kept available out of its authorized and unissued Preferred Stock (and, following the occurrence of a Trigger Event, out of its authorized and unissued Common Stock or other securities or out of its shares held in its treasury) the number of shares of Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) that will be sufficient to permit the exercise in full of all outstanding Rights.

So long as the Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) issuable upon the exercise of Rights may be listed on The NASDAQ Global Select Market (*NASDAQ*) or any other national securities exchange or traded in the over-the-counter market, the Company

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shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed or admitted to trading on the NASDAQ or such other exchange or market upon official notice of issuance upon such exercise.

The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

From and after such time as the Rights become exercisable, the Company shall use its best efforts, if then necessary to permit the issuance of Preferred Stock upon the exercise of Rights, to register and qualify such Preferred Stock under the Securities Act, and any applicable state securities or Blue Sky laws (to the extent exemptions therefrom are not available), cause such registration statement and qualifications to become effective as soon as possible after such filing and keep such registration and qualifications effective until the earlier of the date as of which the Rights are no longer exercisable for such securities and the Expiration Date. The Company may temporarily suspend, from time to time for a period of time not to exceed one hundred twenty (120) days in any particular instance, the exercisability of the Rights in order to prepare and file a registration statement under the Securities Act and permit it to become effective or in order to prepare and file any supplement or amendment to such registration statement that the Board determines to be necessary and appropriate under applicable law. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. The Company shall notify the Rights Agent whenever it makes a public announcement pursuant to this Section and give the Rights Agent a copy of such announcement. Notwithstanding any provision of this Plan to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification or exemption in such jurisdiction shall have been obtained and until a registration statement under the Securities Act (if required) shall have been declared effective.

The Company further covenants and agrees that it will pay when due and payable any and all taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Stock (or Common Stock and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any tax or charge which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates for the Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or deliver any certificates for Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until any such tax or charge shall have been paid (any such tax or charge being payable by the registered holder of such Right Certificate at the time of surrender) or until it has been established to the Company s or the Rights Agent s satisfaction that no such tax or charge is due.

Section 10. Preferred Stock Record Date. Each Person in whose name any certificate for Preferred Stock (or Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Stock (or Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable taxes or charges) was made; *provided, however*, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby (or an exchange pursuant to Section 27), the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Stock (or Common Stock or other securities, as the case may be) for which the Rights shall be exercisable, including, without limitation, the right to vote or to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number of Shares or Number of Rights. The Purchase Price, the number of shares of Preferred Stock or other securities or property purchasable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

11.1. Post-Execution Events.

11.1.1. Corporate Dividends, Reclassifications, Etc. In the event the Company shall, at any time after the date of this Plan, (A) declare and pay a dividend on the Preferred Stock payable in Preferred Stock, (B) subdivide the outstanding Preferred Stock, (C) combine the outstanding Preferred Stock into a smaller number of shares of Preferred Stock or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11.1.1, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. If an event occurs which would require an adjustment under both Section 11.1.1 and Section 11.1.2, the adjustment provided for in this Section 11.1.1 shall be in addition to, and shall be made prior to, the adjustment required pursuant to Section 11.1.2.

11.1.2. Acquiring Person Events; Triggering Events. Subject to Section 27, in the event that a Trigger Event occurs, then, from and after the first occurrence of such event, each holder of a Right, except as provided below, shall thereafter have a right to receive, upon exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right is then exercisable (without giving effect to this Section 11.1.2), in accordance with the terms of this Plan and in lieu of Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by (x) multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is then exercisable (without giving effect to this Section 11.1.2) and (y) dividing that product by 50% of the then current per share market price of the Common Stock (determined pursuant to Section 11.4) on the first of the date of the occurrence of, or the date of the first public announcement of, a Trigger Event (the *Adjustment Shares*); *provided* that the Purchase Price and the number of Adjustment Shares shall thereafter be subject to further adjustment as appropriate in accordance with Section 11.6. Notwithstanding the foregoing, upon the occurrence of a Trigger Event, any Rights that are or were acquired or Beneficially Owned by (1) any Acquiring Person, (2) a transferee of any Acquiring Person who becomes a transferee after the Acquiring Person becomes such, or (3) a transferee of any Acquiring Person who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect avoidance of this Section 11.1.2, and subsequent transferees, shall become null and void without any further action, and any holder (whether or not such holder is an Acquiring Person) of such Rights shall thereafter have no right to exercise such Rights under any provision of this Plan or otherwise. From and after the Trigger Event, no Right Certificate shall be issued pursuant to Section 3 or Section 6 that represents Rights that are or have become null and void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become null and void pursuant to the provisions of this paragraph shall be canceled.

The Company shall use all reasonable efforts to ensure that the provisions of this Section 11.1.2 are complied with, but shall have no liability to any holder of Right Certificates or any other Person as a result of its failure to make any determinations with respect to any Acquiring Person or transferees hereunder.

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From and after the occurrence of an event specified in Section 13.1, any Rights that theretofore have not been exercised pursuant to this Section 11.1.2 shall thereafter be exercisable only in accordance with Section 13 and not pursuant to this Section 11.1.2.

11.1.3. Insufficient Shares. The Company may at its option substitute for Common Stock issuable upon the exercise of Rights in accordance with the foregoing Section 11.1.2 a number of shares of Preferred Stock or fraction thereof such that the then current per share market price of one share of Preferred Stock multiplied by such number or fraction is equal to the then current per share market price of one share of Common Stock. In the event that upon the occurrence of a Trigger Event there shall not be sufficient Common Stock authorized but unissued, or held by the Company as treasury shares, to permit the exercise in full of the Rights in accordance with the foregoing Section 11.1.2, the Company shall take all such action as may be necessary to authorize additional Common Stock for issuance upon exercise of the Rights, *provided, however,* that if the Company determines that it is unable to cause the authorization of a sufficient number of additional shares of Common Stock, then, in the event the Rights become exercisable, the Company, with respect to each Right and to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, shall: (A) determine the excess of (1) the value of the Adjustment Shares issuable upon the exercise of a Right (the *Current Value*), over (2) the Purchase Price (such excess, the *Spread*) and (B) with respect to each Right (other than Rights which have become null and void pursuant to Section 11.1.2), make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Preferred Stock, (4) other equity securities of the Company (including, without limitation, shares, or fractions of shares, of preferred stock which, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the Common Stock, the Board has deemed in good faith to have substantially the same value as the Common Stock) (each such share of preferred stock or fractions of shares of preferred stock constituting a *common stock equivalent*)), (5) debt securities of the Company, (6) other assets or (7) any combination of the foregoing having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected in good faith by the Board; *provided, however,* that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the occurrence of a Trigger Event, then the Company shall be obligated to deliver, to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, Common Stock (to the extent available) and then, if necessary, such number or fractions of Preferred Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If the Board shall determine in good faith that it is unlikely that sufficient additional Common Stock would be authorized for issuance upon exercise in full of the Rights, the thirty (30) day period set forth above may be extended and re-extended to the extent necessary, but not more than one hundred twenty (120) days following the occurrence of a Trigger Event, in order that the Company may seek shareholder approval for the authorization of such additional shares (such period as may be extended, the *Substitution Period*). To the extent that the Company determines that some actions need be taken pursuant to the second and/or third sentences of this Section 11.1.3, the Company (x) shall provide that such action shall apply uniformly to all outstanding Rights, and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11.1.3, the value of a share of Common Stock shall be the then current per share market price (as determined pursuant to Section 11.4) on the date of the occurrence of a Trigger Event and the value of any common stock equivalent shall be deemed to have the same value as the Common Stock on such date. The Board may, but shall not be required to, establish procedures to allocate the right to receive Common Stock upon the exercise of the Rights among holders of Rights pursuant to this Section 11.1.3.

11.2. Dilutive Rights Offering. In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them (for a period expiring within forty-five (45) calendar days after such record date) to subscribe for or purchase Preferred Stock (or securities having the

same rights, privileges and preferences as the Preferred Stock (*equivalent preferred stock*)) or securities convertible into Preferred Stock or equivalent preferred stock at a price per share of Preferred Stock or per share of equivalent preferred stock (or having a conversion or exercise price per share, if a security convertible into or exercisable for Preferred Stock or equivalent preferred stock) less than the then current per share market price of the Preferred Stock (as determined pursuant to Section 11.4) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock and shares of equivalent preferred stock outstanding on such record date plus the number of shares of Preferred Stock and shares of equivalent preferred stock which the aggregate offering price of the total number of shares of Preferred Stock and/or shares of equivalent preferred stock to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current per share market price and the denominator of which shall be the number of shares of Preferred Stock and shares of equivalent preferred stock outstanding on such record date plus the number of additional Preferred Stock and/or shares of equivalent preferred stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Preferred Stock and shares of equivalent preferred stock owned by or held for the account of the Company or any Subsidiary of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

11.3. Distributions. In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness, cash, securities or assets (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or a dividend payable in Preferred Stock (which dividend, for purposes of this Plan, shall be subject to the provisions of Section 11.1.1(A))) or convertible securities, or subscription rights or warrants (excluding those referred to in Section 11.2), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the Preferred Stock (as determined pursuant to Section 11.4) on such record date, less the fair market value (as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent) of the portion of the cash, assets, securities or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one share of Preferred Stock and the denominator of which shall be such current per share market price of the Preferred Stock (as determined pursuant to Section 11.4); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price that would then be in effect if such record date had not been fixed.

11.4. Current Per Share Market Value.

11.4.1. General. For the purpose of any computation hereunder, the *current per share market price* of any security (a *Security* for the purpose of this Section 11.4.1) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the thirty (30) consecutive Trading Days (as such term is hereinafter defined) immediately prior to, but not including, such date; *provided, however*, that in the event that the then current per share market price of the Security is determined during any period following, but not

including, the announcement by the issuer of such Security of (i) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares or (ii) any subdivision, combination or reclassification of such Security, and prior to the expiration of thirty (30) Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the then current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, reported at or prior to 4:00 P.M. Eastern time, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, reported at or prior to 4:00 P.M. Eastern time, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NASDAQ or, if the Security is not listed or admitted to trading on the NASDAQ, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price reported at or prior to 4:00 P.M. Eastern time or, if on such date the Security is not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported at or prior to 4:00 P.M. Eastern time thereby or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board. If the Security is not publicly held or not so listed or traded, or if on any such date the Security is not so quoted and no such market maker is making a market in the Security, current per share market price shall mean the fair value per share as determined in good faith by the Board or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. The term *Trading Day* shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

11.4.2. Preferred Stock. Notwithstanding Section 11.4.1, for the purpose of any computation hereunder, the current per share market price of the Preferred Stock shall be determined in the same manner as set forth above in Section 11.4.1 (other than the last sentence thereof). If the current per share market price of the Preferred Stock cannot be determined in the manner described in Section 11.4.1, the current per share market price of the Preferred Stock shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock occurring after the date of this Plan) multiplied by the current per share market price of the Common Stock (as determined pursuant to Section 11.4.1). If neither the Common Stock nor the Preferred Stock are publicly held or so listed or traded, or if on any such date neither the Common Stock nor the Preferred Stock are so quoted and no such market maker is making a market in either the Common Stock or the Preferred Stock, current per share market price of the Preferred Stock shall mean the fair value per share as determined in good faith by the Board, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. For purposes of this Plan, the current per share market price of one one-thousandth of a share of Preferred Stock shall be equal to the current per share market price of one share of Preferred Stock divided by 1,000.

11.5. Insignificant Changes. No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price. Any adjustments which by reason of this Section 11.5 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one-hundred thousandth of a share of Preferred Stock or the nearest one-hundred thousandth of a share of Common Stock or other share or security, as the case may be. Notwithstanding the first sentence of this Section 11.5, any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the date of the expiration of the right to exercise any Rights.

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11.6. Shares Other Than Preferred Stock. If as a result of an adjustment made pursuant to Section 11.1, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11.1, 11.2, 11.3, 11.5, 11.8, 11.9 and 11.13, and the provisions of Sections 7, 9, 10, 13 and 14 with respect to the Preferred Stock shall apply on like terms to any such other shares.

11.7. Rights Issued Subsequent to Adjustment. All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred Stock and shares of other capital stock or other securities, assets or cash of the Company, if any, purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

11.8. Effect of Adjustments on Existing Rights. Unless the Company shall have exercised its election as provided in Section 11.9, upon each adjustment of the Purchase Price as a result of the calculations made in Section 11.2 and Section 11.3, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one-hundred thousandth of a share of Preferred Stock) obtained by (i) multiplying (x) the number of one one-thousandths of a share of Preferred Stock covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

11.9. Adjustment in Number of Rights. The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in substitution for any adjustment in the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement (with prompt written notice thereof to the Rights Agent) of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11.9, the Company may, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

11.10. Right Certificates Unchanged. Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price per share and the number of one one-thousandths of a share of Preferred Stock which were expressed in the initial Right Certificates issued hereunder.

11.11. Par Value Limitations. Before taking any action that would cause an adjustment reducing the Purchase Price below one one-thousandth of the then par value, if any, of the Preferred Stock or other shares of capital stock issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Stock or other such shares at such adjusted Purchase Price.

11.12. Deferred Issuance. In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer (with prompt written notice thereof to the Rights Agent) until the occurrence of such event the issuance to the holder of any Right exercised after such record date of that number of shares of Preferred Stock and shares of other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Stock and shares of other capital stock or other securities, assets or cash of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; *provided, however*, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder s right to receive such additional shares upon the occurrence of the event requiring such adjustment.

11.13. Reduction in Purchase Price. Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Stock, issuance wholly for cash of any of the Preferred Stock at less than the current market price, issuance wholly for cash of Preferred Stock or securities which by their terms are convertible into or exchangeable for Preferred Stock, dividends on Preferred Stock payable in Preferred Stock or issuance of rights, options or warrants referred to hereinabove in this Section 11, hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such shareholders.

11.14. Company Not to Diminish Benefits of Rights. The Company covenants and agrees that after the earlier of the Stock Acquisition Date or Distribution Date it will not, except as permitted by Section 23, Section 26 or Section 27, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights.

11.15. Adjustment of Rights Associated with Common Stock. Notwithstanding anything contained in this Plan to the contrary, in the event that the Company shall at any time after the date hereof and prior to the Distribution Date (i) declare or pay any dividend on the outstanding Common Stock payable in shares of Common Stock, (ii) effect a subdivision or consolidation of the outstanding Common Stock (by reclassification or otherwise than by the payment of dividends payable in shares of Common Stock) or (iii) combine the outstanding Common Stock into a greater or lesser number of shares of Common Stock, then in any such case, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter but prior to the Distribution Date or in accordance with Section 22 shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event. The adjustments provided for in this Section 11.15 shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made as provided in Section 11 or Section 13, the Company shall (a) promptly prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Rights Agent and with each transfer agent for the Common Stock or the Preferred Stock a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate (or if before the Distribution Date, to each holder of a certificate representing shares of Common Stock or Book Entry Shares in respect thereof) in accordance with Section 25. The Rights Agent shall be fully protected in relying on any such certificate and on

any adjustment or statement therein contained and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of any such adjustment or any such event unless and until it shall have received such certificate.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

13.1. Certain Transactions. In the event that, from and after the first occurrence of a Trigger Event, directly or indirectly, (A) the Company shall effect a share exchange, consolidate with, or merge with and into, any other Person and the Company shall not be the continuing or surviving corporation, (B) any Person shall effect a share exchange, consolidate with the Company, or merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Stock shall be changed into or exchanged for stock or other securities of the Company or any other Person or cash or any other property or (C) the Company shall sell, exchange, mortgage or otherwise transfer (or one or more of its Subsidiaries shall sell, exchange, mortgage or otherwise transfer), in one or more transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company or one or more wholly-owned Subsidiaries of the Company in one or more transactions each of which complies with Section 11.14), then, and in each such case, proper provision shall be made so that (i) each holder of a Right (other than Rights which have become null and void pursuant to Section 11.1.2) shall thereafter have the right to receive, upon the exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12), in accordance with the terms of this Plan and in lieu of Preferred Stock or Common Stock, such number of validly authorized and issued, fully paid, non-assessable and freely tradable Common Stock of the Principal Party (as such term is hereinafter defined) not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (x) multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12) and (y) dividing that product by 50% of the then current per share market price of the Common Stock of such Principal Party (determined pursuant to Section 11.4) on the date of consummation of such consolidation, merger, sale or transfer; *provided* that the price per Right so payable and the number of shares of Common Stock of such Principal Party so receivable upon exercise of a Right shall thereafter be subject to further adjustment as appropriate in accordance with Section 11.6 to reflect any events covered thereby occurring in respect of the Common Stock of such Principal Party after the occurrence of such consolidation, merger, sale or transfer; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all of the obligations and duties of the Company pursuant to this Plan; (iii) the term Company shall thereafter be deemed to refer to such Principal Party and (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock in accordance with Section 9) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its Common Stock thereafter deliverable upon the exercise of the Rights; *provided* that, upon the subsequent occurrence of any consolidation, merger, sale or transfer of assets or other extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Purchase Price as provided in this Section 13.1, such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Stock of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13.1, and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other property. The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement confirming (i) that the requirements of this Section 13.1 and Section 13.2 shall promptly be performed in accordance with their terms, (ii) that the Principal Party has assumed all the duties, responsibilities and obligations that the Company owes to the Rights Agent under this Plan, and (iii) that such consolidation, merger, sale or transfer of assets shall not result in a default by

the Principal Party under this Plan as the same shall have been assumed by the Principal Party pursuant to this Section 13.1 and Section 13.2 and providing that, as soon as practicable after executing such agreement pursuant to this Section 13, the Principal Party, at its own expense, shall:

(1) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date and similarly comply with applicable state securities laws;

(2) use its best efforts, if the Common Stock of the Principal Party shall be listed or admitted to trading on the NASDAQ or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the NASDAQ or such securities exchange;

(3) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(4) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Stock of the Principal Party subject to purchase upon exercise of outstanding Rights.

In case the Principal Party has provision in any of its authorized securities or in its articles or certificate of incorporation or by-laws or other instrument governing its corporate affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this Section 13), in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, Common Stock or common stock equivalents of such Principal Party at less than the then current market price per share thereof (determined pursuant to Section 11.4) or securities exercisable for, or convertible into, Common Stock or common stock equivalents of such Principal Party at less than such then current market price (other than to holders of Rights pursuant to this Section 13), or (ii) providing for any special payment, taxes, charges or similar provision in connection with the issuance of the Common Stock of such Principal Party pursuant to the provision of Section 13, then, in such event, the Company hereby agrees with each holder of Rights that it shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

The Company covenants and agrees that it shall not, at any time after the Trigger Event, enter into any transaction of the type described in clauses (A) through (C) of this Section 13.1 if (i) at the time of or immediately after such consolidation, merger, sale, transfer or other transaction there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (ii) prior to, simultaneously with or immediately after such consolidation, merger, sale, transfer or other transaction, the shareholders of the Person who constitutes, or would constitute, the Principal Party for purposes of Section 13.2 shall have received a distribution of Rights previously owned by such Person or (iii) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights. The provisions of this Section 13 shall similarly apply to successive transactions of the type described in clauses (A) through (C) of this Section 13.1.

13.2. Principal Party. *Principal Party* shall mean:

(i) in the case of any transaction described in clauses (A) or (B) of the first sentence of Section 13.1: (i) the Person that is the issuer of the securities into which the Common Stock is converted in such merger or consolidation, or, if there is more than one such issuer, the issuer the Common Stock of which has the greatest aggregate market value of shares outstanding, or (ii) if no securities are so issued, (x) the Person that is the other party to the merger, if such Person survives said merger, or, if there is more than one such Person, the Person the Common Stock of which has the greatest aggregate market value of shares outstanding or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives) or (z) the Person resulting from the consolidation; and

(ii) in the case of any transaction described in clause (C) of the first sentence in Section 13.1, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding; *provided, however*, that in any such case described in the foregoing clause (i) or (ii) of this Section 13.2, if the shares of Common Stock of such Person are not at such time or have not been continuously over the preceding twelve (12) month period registered under Section 12 of the Exchange Act, then (1) if such Person is a direct or indirect Subsidiary of another Person the shares of Common Stock of which are and have been so registered, the term Principal Party shall refer to such other Person, or (2) if such Person is a Subsidiary, directly or indirectly, of more than one Person, the shares of Common Stock of all of which are and have been so registered, the term Principal Party shall refer to whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding, or (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in clauses (1) and (2) above shall apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case shall bear the obligations set forth in this Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

13.3. Approved Acquisitions. Notwithstanding anything contained herein to the contrary, upon the consummation of any merger or other acquisition transaction of the type described in clause (A), (B) or (C) of Section 13.1 involving the Company pursuant to a merger or other acquisition agreement between the Company and any Person which agreement has been approved by the Board prior to any Person becoming an Acquiring Person, this Plan and the rights of holders of Rights hereunder shall be terminated in accordance with Section 7.1.

Section 14. Fractional Rights and Fractional Shares.

14.1. Cash in Lieu of Fractional Rights. The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights (except prior to the Distribution Date in accordance with Section 11.15). In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14.1, the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NASDAQ or, if the Rights are not listed or admitted to trading on the NASDAQ, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NASDAQ or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board. If on any such date no such market maker is making a market in the Rights, the current market value of the Rights on such date shall be the fair value of the Rights as determined in good faith by the Board, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

14.2. Cash in Lieu of Fractional Shares of Preferred Stock. The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise or exchange of the Rights or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a

share of Preferred Stock). Interests in fractions of shares of Preferred Stock in integral multiples of one one-thousandth of a share of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; *provided*, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as Beneficial Owners of the Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised or exchanged as herein provided an amount in cash equal to the same fraction of the current per share market price of one share of Preferred Stock (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.3. Cash in Lieu of Fractional Shares of Common Stock. The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates which evidence fractional shares of Common Stock upon the exercise or exchange of Rights. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.4. Waiver of Right to Receive Fractional Rights or Shares. The holder of a Right by the acceptance of the Rights expressly waives his right to receive any fractional Rights or any fractional shares upon exercise or exchange of a Right, except as permitted by this Section 14.

14.5. Notice and Payment to the Rights Agent. Whenever a payment for fractional Rights or fractional shares of Common Stock or Preferred Stock is to be made by the Rights Agent, the Company shall (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient monies to the Rights Agent in the form of fully collected funds to make such payments. The Rights Agent shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of any payment for fractional Rights or fractional shares or Common Stock or Preferred Stock under any Section of this Plan relating to the payment of fractional Rights or fractional shares of Common Stock or Preferred Stock unless and until the Rights Agent shall have received such a certificate and sufficient monies.

Section 15. Rights of Action. All rights of action in respect of this Plan, except the rights of action given to the Rights Agent under Section 18 and Section 20, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock), may, in his own behalf and for his own benefit, enforce this Plan, and may institute and maintain any suit, action or proceeding against the Company to enforce this Plan, or otherwise enforce or act in respect of his right to exercise the Rights evidenced by such Right Certificate (or, prior to the Distribution Date, such Common Stock) in the manner provided in such Right Certificate and in this Plan. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Plan and shall be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of, the obligations of any Person (including, without limitation, the Company) subject to this Plan.

Section 16. Agreement of Right Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will not be evidenced by a Right Certificate and will be transferable only in connection with the transfer of the Common Stock;

(b) as of and after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly

endorsed or accompanied by a proper instrument of transfer, and such additional evidence of the identity of the Beneficial Owner and/or former Beneficial Owner as the Company or the Rights Agent shall reasonably request;

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Stock certificate or Book Entry Shares) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated Common Stock certificate (or notices provided to holders of Book Entry Shares) made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary; and

(d) notwithstanding anything in this Plan to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Plan by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court or by a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation.

Section 17. Right Certificate Holder Not Deemed a Shareholder. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting shareholders (except as provided in Section 24), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent. The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder in accordance with a fee schedule to be mutually agreed upon and, from time to time, on demand of the Rights Agent, its reasonable expenses, including but not limited to the reasonable fees and expenses of its counsel, and other disbursements incurred in connection with the preparation, negotiation, delivery, amendment, administration and execution of this Plan and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel), incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance and administration of this Plan, or the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company to the extent that the Rights Agent is successful, in whole or in part, with respect to such enforcement proceeding. The provisions of this Section 18 and Section 20 below shall survive the termination of this Plan, the exercise or expiration of the Rights and the resignation, replacement or removal of the Rights Agent hereunder, including, without limitation, the reasonable costs and expenses of defending against a claim of liability hereunder.

The Rights Agent shall be authorized and protected and shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Plan and the exercise and performance of its duties hereunder in reliance upon any Right Certificate or certificate for the Preferred Stock or the Common Stock or for any other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, instruction, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof. The Rights Agent shall not be deemed to have knowledge of any event of which it

was supposed to receive notice thereof hereunder, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice.

Section 19. Merger or Consolidation or Change of Name of Rights Agent. Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may effect a share exchange, be converted into or be consolidated with, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the shareowner services business or corporate trust or stock transfer business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Plan without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21. In case at the time such successor Rights Agent shall succeed to the agency created by this Plan, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Plan.

In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Plan.

Section 20. Duties of Rights Agent. The Rights Agent undertakes to perform only the duties and obligations expressly imposed by this Plan (and no implied duties or obligations) upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

20.1. Legal Counsel. The Rights Agent may consult with outside or internal legal counsel selected by it (who may be legal counsel for the Company and/or the Board), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it in accordance with such advice or opinion.

20.2. Certificates as to Facts or Matters. Whenever in the performance of its duties under this Plan the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring Person and the determination of the current per share market price of any security) be proved or established by the Company prior to taking or suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the President, the Chief Operating Officer, any Executive Vice President, any Senior Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company and delivered to the Rights Agent; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Plan in reliance upon such certificate.

20.3. Standard of Care. The Rights Agent shall be liable hereunder to the Company and any other Person only for its own gross negligence, bad faith or willful misconduct (each as determined by a final, non-appealable judgment of a court of competent jurisdiction). Anything to the contrary notwithstanding, in no event shall the Rights Agent be liable for special, indirect, consequential, incidental or punitive loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage. Any liability of the Rights Agent under this Agreement shall be limited to four times the amount of annual fees paid by the Company to the Rights Agent.

20.4. Reliance on Plan and Right Certificates. The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Plan or in the Right Certificates (except as to its countersignature on such Right Certificates) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

20.5. No Responsibility as to Certain Matters. The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Plan or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or failure by the Company to satisfy conditions contained in this Plan or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming null and void pursuant to Section 11.1.2 hereof) or any change or adjustment in the terms of the Rights, including any adjustment required under the provisions of Sections 3, 11, 13, 23 or 27 hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate furnished pursuant to Section 12 hereof, describing any such change or adjustment, upon which the Rights Agent may rely); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Stock or other securities to be issued pursuant to this Plan or any Right Certificate or as to whether any Preferred Stock or other securities will, when so issued, be validly authorized and issued, fully paid and nonassessable.

20.6. Further Assurance by Company. The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties under this Plan.

20.7. Authorized Company Officers. The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the President, the Chief Operating Officer, any Executive Vice President, any Senior Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and such instructions shall be full authorization and protection to the Rights Agent and the Rights Agent shall not be liable for or in respect of any action taken, suffered or omitted to be taken by it in accordance with instructions of any such officer or for any delay in acting while waiting for such instructions. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received by any such officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken, suffered or omitted to be taken by the Rights Agent with respect to its duties or obligations under this Plan and the date on and/or after which such action shall be taken, suffered or such omission shall be effective. The Rights Agent shall not be liable to the Company or any other Person for any action taken or suffered by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after the date specified therein (which date shall not be less than three (3) Business Days after the date any such officer actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking of any such action (or the effective date in the case of omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

20.8. Freedom to Trade in Company Securities. The Rights Agent and any shareholder, affiliate, director, officer, agent or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Plan. Nothing herein shall preclude the Rights Agent or any shareholder, affiliate, director, officer, agent or employee from acting in any other capacity for the Company or for any other Person.

20.9. Reliance on Attorneys and Agents. The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself (through its directors, officers and employees) or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable

for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or any other Person resulting from any such act, omission, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct (each as determined by a final, non-appealable judgment of a court of competent jurisdiction) in the selection and continued employment thereof.

20.10. Incomplete Certificate. If, with respect to any Right Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of assignment or the form of election to purchase set forth on the reverse thereof, as the case may be, has either not been completed to certify the holder is not an Acquiring Person or a transferee thereof, or is not signed or indicates an affirmative response to clause 1 and/or 2, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

20.11. Repayment of Funds. No provision of this Plan shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of its rights hereunder if the Rights Agent believes that repayment of such funds or adequate indemnification against such risk or liability is not assured to it.

20.12. Rights Holders List. At any time and from time to time after the Distribution Date, upon the request of the Company, the Rights Agent shall promptly deliver to the Company a list, as of the most recent practicable date (or as of such earlier date as may be specified by the Company), of the holders of record of Rights.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Plan upon thirty (30) days notice in writing mailed to the Company and to each transfer agent of the Common Stock and/or Preferred Stock known to the Rights Agent, as applicable, by registered or certified mail. Following the Distribution Date, the Company shall promptly notify the holders of the Right Certificates by first-class mail of any such resignation. In the event the transfer agency relationship in effect between the Company and the Rights Agent terminates, the Rights Agent will be deemed to have resigned automatically and be discharged from its duties under this Plan as of the effective date of such termination. The Company may remove the Rights Agent or any successor Rights Agent upon thirty (30) days notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and/or Preferred Stock, as applicable, by registered or certified mail, and, following the Distribution Date, to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the resigning, removed, or incapacitated Rights Agent shall remit to the Company, or to any successor Rights Agent designated by the Company, all books, records, funds, certificates or other documents or instruments of any kind then in its possession which were acquired by such resigning, removed or incapacitated Rights Agent in connection with its services as Rights Agent hereunder (except for such items that it is required to retain pursuant to applicable law, regulation, order or the Rights Agent s internal policies), and shall thereafter be discharged from all duties and obligations hereunder. Following notice of such removal, resignation or incapacity, the Company shall appoint a successor to such Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (A) a Person organized and doing business under the laws of the United States or any state thereof, which is authorized under such laws to exercise stock transfer or corporate trust powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least $50 million or (B) an Affiliate of a Person described in clause (A) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and/or Preferred Stock, as applicable, and, following the Distribution Date, mail a notice thereof

in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Plan or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such forms as may be approved by its Board to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Plan. In addition, in connection with the issuance or sale of Common Stock following the Distribution Date and prior to the Expiration Date, the Company shall, with respect to Common Stock so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, granted or awarded, or upon exercise, conversion or exchange of securities hereinafter issued by the Company, in each case existing prior to the Distribution Date, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; *provided, however*, that (i) no such Right Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Right Certificate would be issued and (ii) no such Right Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption.

23.1. Right to Redeem. The Board may, at its option, at any time prior to a Trigger Event, redeem all but not less than all of the then outstanding Rights at a redemption price of $.01 per Right, appropriately adjusted to reflect any stock split, stock dividend, recapitalization or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the *Redemption Price*), and the Company may, at its option, pay the Redemption Price in Common Stock (based on the current per share market price, determined pursuant to Section 11.4, of the Common Stock at the time of redemption), cash or any other form of consideration deemed appropriate by the Board. The redemption of the Rights by the Board may be made effective at such time, on such basis and subject to such conditions as the Board in its sole discretion may establish.

23.2. Redemption Procedures. Immediately upon the action of the Board ordering the redemption of the Rights (or at such later time as the Board may establish for the effectiveness of such redemption), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. The Company shall promptly give public notice of any such redemption (with prompt written notice thereof to the Rights Agent); *provided, however*, that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. The Company shall promptly give, or (by giving written notice and all necessary information and documents to the Rights Agent) cause the Rights Agent to give, notice of such redemption to the holders of the then outstanding Rights by mailing such notice to all such holders at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made. The failure to give notice required by this Section 23.2 or any defect therein shall not affect the validity of the action taken by the Company. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 27, and other than in connection with the purchase, acquisition or redemption of Common Stock prior to the Distribution Date.

Section 24. Notice of Certain Events. In case the Company shall propose at any time after the earlier of the Stock Acquisition Date and the Distribution Date (a) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividends, or a stock dividend on, or a subdivision, combination or reclassification

of the Common Stock), or (b) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional Preferred Stock or shares of stock of any class or any other securities, rights or options, or (c) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding Preferred Stock), or (d) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to, any other Person (other than pursuant to a merger or other acquisition agreement of the type excluded from the definition of Beneficial Ownership in Section 1.3), or (e) to effect the liquidation, dissolution or winding up of the Company, or (f) to declare or pay any dividend on the Common Stock payable in Common Stock or to effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of dividends in Common Stock), then, in each such case, the Company shall give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 25, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Preferred Stock and/or Common Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (a) or (b) above at least ten (10) days prior to the record date for determining holders of the Preferred Stock for purposes of such action, and in the case of any such other action, at least ten (10) days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Preferred Stock and/or Common Stock, whichever shall be the earlier.

In case any event set forth in Section 11.1.2 or Section 13 shall occur, then, in any such case, (i) the Company shall as soon as practicable thereafter give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 25, a notice of the occurrence of such event, which notice shall describe the event and the consequences of the event to holders of Rights under Section 11.1.2 and Section 13, and (ii) all references in this Section 24 to Preferred Stock shall be deemed thereafter to refer to Common Stock and/or, if appropriate, other securities.

Section 25. Notices. Subject to the provisions of this Plan, notices or demands authorized by this Plan to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Leap Wireless International, Inc.

5887 Copley Drive

San Diego, CA 92111

Attention: General Counsel

Subject to the provisions of this Plan, including but not limited to Section 21 and Section 24, any notice or demand authorized by this Plan to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

Mellon Investor Services LLC

480 Washington Boulevard 29th Floor

Jersey City, NJ 07310

Attention: Tiffany Skiles

with a copy to:

Mellon Investor Services LLC

480 Washington Boulevard 29th Floor

Jersey City, NJ 07310

Attention: Legal Department

Notices or demands authorized by this Plan to be given or made by the Company or the Rights Agent to the holder of any Right Certificate (or, prior to the Distribution Date, to the holder of any certificate representing

Common Stock) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company or the transfer agent or registrar for the Common Stock; provided that prior to the Distribution Date a filing by the Company with the Securities and Exchange Commission shall constitute sufficient notice to the holders of securities of the Company, including the Rights, for purposes of this Plan and no other notice need be given.

Section 26. Supplements and Amendments. Except as otherwise provided in this Section 26, for so long as the Rights are then redeemable, the Company may in its sole and absolute discretion, and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Plan in any respect without the approval of any holders of Rights or Common Stock. From and after the time that the Rights are no longer redeemable, the Company may, and the Rights Agent shall, if the Company so directs, from time to time supplement or amend this Plan without the approval of any holders of Rights (i) to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein or (ii) to make any other changes or provisions in regard to matters or questions arising hereunder which the Company may deem necessary or desirable, including but not limited to extending the Final Expiration Date; *provided, however*, that no such supplement or amendment shall adversely affect the interests of the holders of Rights as such (other than an Acquiring Person), and no such supplement or amendment may cause the Rights again to become redeemable or cause this Plan again to become amendable as to an Acquiring Person other than in accordance with this sentence; *provided further*, that the right of the Board to extend the Distribution Date or make any other determination under this Plan that does not affect the rights, duties, obligations or liabilities of the Rights Agent shall not require any amendment or supplement hereunder. Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 26, the Rights Agent shall execute such supplement or amendment. Notwithstanding anything contained in this Plan to the contrary, the Rights Agent may, but shall not be obligated to, enter into any supplement or amendment that affects the Rights Agent s own rights, duties, immunities or obligations under this Plan.

Section 27. Exchange.

27.1. Exchange of Common Stock for Rights. The Board may, at its option, at any time after the occurrence of a Trigger Event, exchange Common Stock for all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become null and void pursuant to the provisions of Section 11.1.2) by exchanging at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such amount per Right being hereinafter referred to as the *Exchange Consideration*). Notwithstanding the foregoing, the Board shall not be empowered to effect such exchange at any time after any Acquiring Person shall have become the Beneficial Owner of 50% or more of the Common Stock then outstanding. From and after the occurrence of an event specified in Section 13.1, any Rights that theretofore have not been exchanged pursuant to this Section 27.1 shall thereafter be exercisable only in accordance with Section 13 and may not be exchanged pursuant to this Section 27.1. The exchange of the Rights by the Board may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Without limiting the foregoing, prior to effecting an exchange pursuant to this Section 27, the Board may direct the Company to enter into a Trust Agreement in such form and with such terms as the Board shall then approve (the *Trust Agreement*). If the Board so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the *Trust*) all of the Common Stock issuable pursuant to the exchange (or any portion thereof that have not theretofore been issued in connection with the exchange). From and after the time at which such shares are issued to the Trust, all shareholders then entitled to receive shares pursuant to the exchange shall be entitled to receive such shares (and any dividends or distributions made thereon after the date on which such shares are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement. Any Common Stock issued at the direction of the Board in connection herewith shall be validly issued, fully paid and nonassessable Common Stock or Preferred Stock (as the case may be), and the Company shall be deemed to have received as consideration for such issuance a benefit having a value that is at least equal to the aggregate par value of the shares so issued.

27.2. Exchange Procedures. Immediately upon the effectiveness of the action of the Board ordering the exchange for any Rights pursuant to Section 27.1 and without any further action and without any notice, the

right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive the Exchange Consideration. The Company shall promptly give public notice of any such exchange (with prompt written notice thereof to the Rights Agent); *provided, however*, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange shall state the method by which the exchange of the Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than the Rights that have become null and void pursuant to the provisions of Section 11.1.2) held by each holder of Rights.

27.3. Insufficient Shares. The Company may at its option substitute, and, in the event that there shall not be sufficient Common Stock issued but not outstanding or authorized but unissued to permit an exchange of Rights for Common Stock as contemplated in accordance with this Section 27, the Company shall substitute to the extent of such insufficiency, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, a number of shares of Preferred Stock or fraction thereof (or equivalent preferred stock, as such term is defined in Section 11.2) such that the current per share market price (determined pursuant to Section 11.4) of one share of Preferred Stock (or equivalent preferred stock) multiplied by such number or fraction is equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11.4) as of the date of such exchange.

Section 28. Process to Seek Exemption. Any Person who desires to effect any acquisition of Common Stock that would, if consummated, result in such Person beneficially owning 4.99% or more of the then outstanding Common Stock (or, in the case of an Existing Holder, additional shares of Common Stock) (a *Requesting Person*) may, prior to the Stock Acquisition Date and in accordance with this Section 28, request that the Board grant an exemption with respect to such acquisition under this Plan so that such Person would be deemed to be an Exempt Person under subsection (ii) of Section 1.7 hereof for purposes of this Plan (an *Exemption Request*). An Exemption Request shall be in proper form and shall be delivered by registered mail, return receipt requested, to the Secretary of the Company at the principal executive office of the Company. The Exemption Request shall be deemed made upon receipt by the Secretary of the Company. To be in proper form, an Exemption Request shall set forth (i) the name and address of the Requesting Person, (ii) the number and percentage of shares of Common Stock then Beneficially Owned by the Requesting Person, together with all Affiliates and Associates of the Requesting Person, and (iii) a reasonably detailed description of the transaction or transactions by which the Requesting Person would propose to acquire Beneficial Ownership of Common Stock aggregating 4.99% or more of the then outstanding Common Stock and the maximum number and percentage of shares of Common Stock that the Requesting Person proposes to acquire. The Board shall make a determination whether to grant an exemption in response to an Exemption Request as promptly as practicable (and, in any event, within ten (10) Business Days) after receipt thereof; provided, that the failure of the Board to make a determination within such period shall be deemed to constitute the denial by the Board of the Exemption Request. The Requesting Person shall respond promptly to reasonable and appropriate requests for additional information from the Board and its advisors to assist the Board in making its determination. The Board shall only grant an exemption in response to an Exemption Request if the Board determines in its sole discretion that the acquisition of Beneficial Ownership of Common Stock by the Requesting Person will not limit or impair the availability to the Company of the NOLs. Any exemption granted hereunder may be granted in whole or in part, and may be subject to limitations or conditions (including a requirement that the Requesting Person agree that it will not acquire Beneficial Ownership of shares of Common Stock in excess of the maximum number and percentage of shares approved by the Board), in each case as and to the extent the Board shall determine necessary or desirable to provide for the protection of the Company s NOLs. Any Exemption Request may be submitted on a confidential basis and, except to the extent required by applicable law, the Company shall maintain the confidentiality of such Exemption Request and the Board s determination with respect thereto, unless the information contained in the Exemption Request or the Board s determination with respect thereto otherwise becomes publicly available. The Exemption Request shall be considered and evaluated by directors serving on the Board, or a duly constituted committee thereof, who are independent of the Company and the

Requesting Person and disinterested with respect to the Exemption Request, and the action of a majority of such independent and disinterested directors shall be deemed to be the determination of the Board for purposes of such Exemption Request.

Section 29. Successors. All the covenants and provisions of this Plan by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 30. Benefits of this Plan. Nothing in this Plan shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock) any legal or equitable right, remedy or claim under this Plan; but this Plan shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock).

Section 31. Determination and Actions by the Board. The Board, or any duly authorized committee thereof, shall have the exclusive power and authority to administer this Plan and to exercise the rights and powers specifically granted to the Board or to the Company, or as may be necessary or advisable in the administration of this Plan, including, without limitation, the right and power to (i) interpret the provisions of this Plan and (ii) make all determinations deemed necessary or advisable for the administration of this Plan (including, without limitation, a determination to redeem or not redeem the Rights or amend this Plan). In administering this Plan and exercising the rights and powers specifically granted to the Board and to the Company hereunder, and in interpreting this Plan and making any determination hereunder, the Board, or any duly authorized committee thereof, may consider any and all facts, circumstances or information it deems to be necessary, useful or appropriate. All such actions, calculations, interpretations and determinations that are done or made by the Board, or any duly authorized committee thereof, in good faith shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties to the fullest extent permitted by applicable law. The Rights Agent is entitled always to presume that the Board, or any duly authorized committee thereof, acted in good faith and shall be fully protected and incur no liability in reliance thereon.

Section 32. Severability. If any term, provision, covenant or restriction of this Plan or applicable to this Plan is held by a court of competent jurisdiction or other authority to be invalid, null and void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, further, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately.

Section 33. Governing Law. This Plan and each Right Certificate issued hereunder shall be deemed to be a contract made under the internal laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 34. Counterparts. This Plan may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Plan transmitted electronically shall have the same authority, effect and enforceability as an original signature.

Section 35. Descriptive Heading. Descriptive headings of the several Sections of this Plan are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 36. Force Majeure. Notwithstanding anything to the contrary contained herein, the Rights Agent shall not incur any liability for not performing, or a delay in the performance of, any act, duty, obligation or responsibility by reason of any occurrence beyond the reasonable control of the Rights Agent (including without limitation any act or provision of any present or future law or regulation or governmental authority, any act of God, war, civil or military disobedience or disorder, riot, rebellion, terrorism, insurrection, fire, earthquake, storm, flood, strike, work stoppage, labor dispute, accident or failure or malfunction of any utilities, means of communication or computer (software or hardware) services or similar occurrence).

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Section 37. Each Person that is a party hereto acknowledges that the Rights Agent is subject to the customer identification program (Customer Identification Program) requirements under the USA PATRIOT Act and its implementing regulations, and that the Rights Agent must obtain, verify and record information that allows the Rights Agent to identify each such person or entity. Accordingly, prior to accepting an appointment hereunder, the Rights Agent may request information from any such person or entity that will help the Rights Agent to identify such person or entity, including without limitation, as applicable, such person or entity s physical address, tax identification number, organizational documents, certificate of good standing, license to do business, or any other information that the Rights Agent deems necessary. Each person or entity that is a party hereto acknowledges that the Rights Agent cannot accept an appointment hereunder unless and until the Rights Agent verifies each such person or entity s identity in accordance with the Customer Identification Program requirements.

Section 38. The Bank of New York Mellon Corporation (BNYM) has adopted an incentive compensation program designed (i) to facilitate clients gaining access to and being provided with explanations about the full range of products and services offered by BNYM and its subsidiaries and (ii) to expand and develop client relationships. This program may lead to the payment of referral fees and/or bonuses to employees of BNYM or its subsidiaries who may have been involved in a referral that resulted in the execution of this Plan, obtaining products or services covered by this Plan or products or services that may be ancillary or supplemental to such products or services. Any such referral fees or bonuses are funded by BNYM solely out of fees and commissions paid under this Plan or with respect to such ancillary or supplemental products or services.

[*Signature Page Follows*]

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IN WITNESS WHEREOF, the parties hereto have caused this Plan to be duly executed, as of the day and year first above written.

LEAP WIRELESS INTERNATIONAL, INC.

By /s/ Robert J. Irving, Jr.
Name: Robert J. Irving, Jr.
Title: Senior Vice President and General Counsel

MELLON INVESTOR SERVICES LLC

By /s/ Tiffany J. Skiles
Name: Tiffany J. Skiles
Title: Vice President

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EXHIBIT A

FORM OF

CERTIFICATE OF DESIGNATIONS

of

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

of

LEAP WIRELESS INTERNATIONAL, INC.

(Pursuant to Section 151 of the

General Corporation Law of the State of Delaware)

Leap Wireless International, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the *Corporation*), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the General Corporation Law at a meeting duly called and held on August 30, 2011:

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board in accordance with the provisions of the Amended and Restated Certificate of Incorporation of this Corporation, the Board hereby creates a series of Preferred Stock, par value $.0001 per share (the *Preferred Stock*), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, powers and preferences, and qualifications, limitations and restrictions thereof as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as Series A Junior Participating Preferred Stock (the *Series A Preferred Stock*) and the number of shares constituting the Series A Preferred Stock shall be 160,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any class or series of stock of this Corporation ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value $.0001 per share (the *Common Stock*), of the Corporation, and of any other stock ranking junior to the Series A Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a *Quarterly Dividend Payment Date*), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of

Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section 2 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the shareholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of the shareholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(D) If, at the time of any annual meeting of shareholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share or shares of Series A Preferred Stock are in default, the number of directors constituting the Board of Directors shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Corporation, the holders of record of the Series A Preferred Stock, voting separately as a class to the exclusion of the holders of Common Stock, shall be entitled at such meeting of shareholders (and at each subsequent annual meeting of shareholders), unless all dividends in arrears on the Series A Preferred Stock have been paid or declared and set

apart for payment prior thereto, to vote for the election of two directors of the Corporation, the holders of any Series A Preferred Stock being entitled to cast a number of votes per share of Series A Preferred Stock as is specified in paragraph (A) of this Section 3. Each such additional director shall serve until the next annual meeting of shareholders for the election of directors, or until his successor shall be elected and shall qualify, or until his right to hold such office terminates pursuant to the provisions of this Section 3(D). Until the default in payments of all dividends which permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the provisions of this Section 3(D) may be removed at any time, without cause, only by the affirmative vote of the holders of the shares of Series A Preferred Stock at the time entitled to cast a majority of the votes entitled to be cast for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Preferred Stock shall be divested of the foregoing special voting rights, subject to revesting in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(D) shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in this Section 3.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon dissolution, liquidation or winding up) to the Series A Preferred Stock (*provided, however*, that the Corporation shall be permitted to redeem, purchase or otherwise acquire the Common Stock of the Corporation held by any current or former employee, consultant or director of the Corporation or its subsidiaries pursuant to the terms of any equity subscription agreement, stock option agreement or similar agreement entered into in the ordinary course of business); or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof.

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All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Amended and Restated Certificate of Incorporation or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation, dissolution or winding up of the Corporation, voluntary or otherwise no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of Series A Preferred Stock shall have received an amount per share (the *Series A Liquidation Preference*) equal to $1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of Common Stock, or (ii) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (i) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of stock of the Corporation, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in proportion to their respective liquidation preferences.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The Series A Preferred Stock shall not be redeemable by the Corporation.

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Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, junior to all series of any other class of the Corporation s Preferred Stock, except to the extent that any such other series specifically provides that it shall rank on a parity with or junior to the Series A Preferred Stock.

Section 10. Amendment. At any time any shares of Series A Preferred Stock are outstanding, the Amended and Restated Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting separately as a single class.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder s fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

* * *

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IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by the undersigned authorized officer this thirtieth day of August 2011.

LEAP WIRELESS INTERNATIONAL, INC.

By:
Name: Robert J. Irving, Jr.
Title: Senior Vice President and General Counsel

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EXHIBIT B

[Form of Right Certificate]

Certificate No. R- Rights

NOT EXERCISABLE AFTER AUGUST 31, 2014 OR EARLIER IF NOTICE OF REDEMPTION OR EXCHANGE IS GIVEN, IF THE COMPANY IS MERGED OR ACQUIRED PURSUANT TO AN AGREEMENT OF THE TYPE DESCRIBED IN SECTION 13.3 OF THE TAX BENEFIT PRESERVATION PLAN (THE *PLAN*), OR IF THE BOARD OF DIRECTORS DETERMINES THAT THE NOLS ARE UTILIZED IN ALL MATERIAL RESPECTS OR NO LONGER AVAILABLE IN ANY MATERIAL RESPECT UNDER SECTION 382 OF THE CODE (AS DEFINED IN THE PLAN) OR THAT AN OWNERSHIP CHANGE UNDER SECTION 382 OF THE CODE WOULD NOT ADVERSELY IMPACT IN ANY MATERIAL RESPECT THE TIME PERIOD IN WHICH THE COMPANY COULD USE THE NOLS, OR MATERIALLY IMPAIR THE AMOUNT OF THE NOLS THAT COULD BE USED BY THE COMPANY IN ANY PARTICULAR TIME PERIOD, FOR APPLICABLE TAX PURPOSES. UNDER CERTAIN CIRCUMSTANCES (SPECIFIED IN SECTION 11.1.2 OF THE PLAN), RIGHTS BENEFICIALLY OWNED BY OR TRANSFERRED TO AN ACQUIRING PERSON (AS DEFINED IN THE PLAN), OR ANY SUBSEQUENT HOLDER OF SUCH RIGHTS, WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

Right Certificate

LEAP WIRELESS INTERNATIONAL, INC.

This certifies that , or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Tax Benefit Preservation Plan, dated as of August 30, 2011, as the same may be amended from time to time (the *Plan*), between Leap Wireless International, Inc., a Delaware corporation (the *Company*), and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent (the *Rights Agent*), to purchase from the Company at any time after the Distribution Date and prior to 5:00 P.M. (New York time) on August 31, 2014, at the offices of the Rights Agent, or its successors as Rights Agent, designated for such purpose, one one-thousandth of a fully paid, nonassessable share of Series A Junior Participating Preferred Stock, par value $.0001 per share (the *Preferred Stock*), of the Company, at a purchase price of $60.00 per one one-thousandth of a share of Preferred Stock, subject to adjustment (the *Purchase Price*), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase and certification duly executed. The number of Rights evidenced by this Right Certificate (and the number of one one-thousandths of a share of Preferred Stock which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of , 20 based on the Preferred Stock as constituted at such date. Capitalized terms used in this Right Certificate without definition shall have the meanings ascribed to them in the Plan. As provided in the Plan, the Purchase Price and the number of shares of Preferred Stock which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Plan, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which the Plan reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Plan are on file at the principal office of the Company and an office of the Rights Agent designed for such purpose.

This Right Certificate, with or without other Right Certificates, upon surrender at the offices of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Preferred Stock as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be

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entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Plan, the Board may, at its option, (i) redeem the Rights evidenced by this Right Certificate at a redemption price of $.01 per Right or (ii) exchange Common Stock for the Rights evidenced by this Certificate, in whole or in part.

No fractional Preferred Stock will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depository receipts), but in lieu thereof a cash payment will be made, as provided in the Plan.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Stock or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Plan or herein be construed to confer upon the holder hereof, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting shareholders (except as provided in the Plan), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Plan.

If any term, provision, covenant or restriction of the Plan is held by a court of competent jurisdiction or other authority to be invalid, null and void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

This Right Certificate shall not be valid or binding for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

Dated as of , 20 .

Attest:

LEAP WIRELESS INTERNATIONAL, INC.

By
Title:

By
Title:

Countersigned:

MELLON INVESTOR SERVICES LLC,

as Rights Agent

By
Authorized Signature

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Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder

desires to transfer the Right Certificate.)

FOR VALUE RECEIVED
hereby sells, assigns and transfers unto

(Please print name and address

of transferee)

Rights evidenced by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated:

Signature

Signature Guaranteed:

Signatures must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company s Rights Agent.

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The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not Beneficially Owned by and are not being assigned to an Acquiring Person; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any person who is, was or subsequently became an Acquiring Person.

Dated:

Signature

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FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to

exercise the Right Certificate.)

To: Leap Wireless International, Inc.

The undersigned hereby irrevocably elects to exercise Rights represented by this Right Certificate to purchase the Preferred Stock issuable upon the exercise of such Rights (or such other securities or property of the Company or of any other Person which may be issuable upon the exercise of the Rights) and requests that certificates for such stock be issued in the name of:

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security

or other identifying number

(Please print name and address)

Dated:

Signature

Signature Guaranteed:

Signatures must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company s Rights Agent.

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The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not Beneficially Owned by and are not being assigned to an Acquiring Person; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any person who is, was or subsequently became an Acquiring Person.

Dated:

Signature

NOTICE

The signature in the foregoing Form of Assignment and Form of Election to Purchase must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or Form of Election to Purchase is not completed, the Company will deem the Beneficial Owner of the Rights evidenced by this Right Certificate to be an Acquiring Person and such Assignment or Election to Purchase will not be honored.

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EXHIBIT C

As described in the Tax Benefit Preservation Plan, Rights which are held by or have been held by an Acquiring Person (as defined in the Tax Benefit Preservation Plan) and certain transferees thereof shall become null and void and will no longer be transferable.

SUMMARY OF RIGHTS TO PURCHASE

PREFERRED SHARES

On August 30, 2011 the Board of Directors of Leap Wireless International, Inc. (the *Company*) declared a dividend of one preferred stock purchase right (individually, a *Right* and collectively, the *Rights*) for each share of common stock, par value $.0001 per share (the *Common Stock*), of the Company outstanding at the close of business on September 12, 2010 (the *Record Date*). As long as the Rights are attached to the Common Stock, the Company will issue one Right (subject to adjustment) with each new share of Common Stock so that all such shares will have attached Rights. When exercisable, each Right will entitle the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value $.0001 per share (the *Preferred Stock*), of the Company at a price of $60.00 per one one-thousandth of a share of Preferred Stock, subject to certain anti-dilution adjustments (the *Purchase Price*). The description and terms of the Rights are set forth in a Tax Benefit Preservation Plan, dated as of August 30, 2011, as the same may be amended from time to time (the *Plan*), between the Company and Mellon Investor Services LLC, as rights agent.

By adopting the Plan, the Board of Directors is seeking to protect the Company s ability to carry forward its net operating losses (collectively, *NOLs*). The Company has experienced substantial operating losses, and for federal and state income tax purposes, the Company may carry forward net operating losses in certain circumstances to offset current and future taxable income, which will reduce federal and state income tax liability, subject to certain requirements and restrictions. These federal and state NOLs can be a valuable asset of the Company, which may inure to the benefit of the Company and its shareholders. However, if the Company experiences an ownership change, as defined in Section 382 of the Internal Revenue Code (the *Code*), its ability to use the NOLs could be substantially limited, and the timing of the usage of the NOLs could be substantially delayed, which could significantly impair the value of the Company s NOL asset. Generally, an ownership change occurs if the percentage of the Company s stock owned by one or more five percent shareholders increases by more than fifty percentage points over the lowest percentage of stock owned by such shareholders at any time during the prior three-year period or, if sooner, since the last ownership change experienced by the Company. The Plan is intended to act as a deterrent to any person acquiring 4.99% or more of the outstanding shares of Common Stock without the approval of the Board of Directors. This would protect the Company s NOL asset because changes in ownership by a person owning less than 4.99% of the Common Stock are not included in the calculation of ownership change for purposes of Section 382 of the Code.

Until the earlier to occur of (i) the close of business on the tenth business day following a public announcement that a person or group has acquired, or obtained the right to acquire, beneficial ownership of 4.99% or more of the Common Stock (an *Acquiring Person*) or (ii) the close of business on the tenth business day following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 4.99% or more of the Common Stock (the earlier of (i) and (ii) being called the *Distribution Date*), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificates, or, with respect to any uncertificated Common Stock registered in book entry form, by notation in book entry, in either case together with a copy of this Summary of Rights. The Board can postpone the Distribution Date in certain circumstances. Shares held by persons participating in a group are deemed to be beneficially owned by all persons treated as the same entity for purposes of Section 382 of the Code. The Plan provides that any person who beneficially owned 4.99% or more of the Common Stock immediately prior to the first public announcement of the adoption of the Plan (each an *Existing Holder*), shall not be deemed to be an Acquiring Person for purposes of the Plan unless an Existing Holder becomes the beneficial owner of one or more additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the

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Company on the outstanding Common Stock, pursuant to a split or subdivision of the outstanding Common Stock or pursuant to the acquisition of Common Stock upon the exercise of any option, warrants or other rights, or upon the initial grant or vesting of restricted stock, granted by the Company to its directors and officers). However, if upon acquiring beneficial ownership of one or more additional shares of Common Stock, the Existing Holder does not beneficially own 4.99% or more of the Common Stock then outstanding, the Existing Holder will not be treated as an Acquiring Person for purposes of the Plan.

Any person who desires to effect an acquisition of Common Stock that would, if consummated, result in such person beneficially owning 4.99% or more of the then outstanding Common Stock or any Existing Holder who desires to effect an acquisition of additional Common Stock may, prior to acquiring the Common Stock, request that the Board of Directors grant an exemption covering the proposed acquisition. The Plan provides that the Board of Directors (or a committee thereof) may only grant an exemption if the Board of Directors (or a committee thereof) determines that the acquisition of beneficial ownership of Common Stock will not limit or impair the availability to the Company of the NOLs. Any exemption granted by the Board of Directors (or a committee thereof) may be granted in whole or in part, and may be subject to limitations or conditions the Board of Directors (or a committee thereof) determines necessary or desirable to provide for the protection of the Company s NOL asset. The exemption request must include (i) the name and address of the requesting person, (ii) the number and percentage of shares of Common Stock beneficially owned by the requesting person and (iii) a reasonably detailed description of the transaction by which the requesting person would propose to acquire beneficial ownership of Common Stock above the 4.99% ownership threshold and the percentage of shares that the requesting person proposes to acquire. The Board of Directors (or a committee thereof) must make a determination whether to grant the exemption within ten business days after receipt of the request. The requesting person is required to respond promptly to reasonable and appropriate requests for additional information from the Board or its advisors to assist the Board in making its determination. Failure of the Board of Directors (or a committee thereof) to make a determination within ten business days of receipt of the exemption request is deemed to constitute a denial by the Board of Directors of the exemption request. Each exemption request will be considered and evaluated by directors serving on the Board of Directors (or a committee thereof) who are independent of the Company and the party requesting the exemption and disinterested with respect to that specific exemption request. The decision of a majority of the independent and disinterested directors (or a committee of the Board of Directors) is deemed to be the determination of the Board of Directors with respect to any request for exemption from the Plan.

The Plan provides that until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), the Rights will be transferred only with the Common Stock. Until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), new Common Stock certificates issued after the close of business on the Record Date upon transfer or new issuance of the Common Stock will contain a notation incorporating the Plan by reference, and the Company will deliver a notice to that effect upon the transfer or new issuance of book entry shares. Until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), the surrender for transfer of any certificates for Common Stock or any book entry shares, with or without such notation, notice or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate or the book entry shares. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (*Right Certificates*) will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on August 31, 2014, subject to the Company s right to extend such date (the *Final Expiration Date*), or earlier if redeemed or exchanged by the Company, if the Company is merged or acquired pursuant to a transaction approved by the Board of Directors prior to the time at which the person has become an Acquiring Person, or if the Board of Directors determines that the NOLs are utilized in all material respects or no longer available in any material respect under Section 382 of the Code or that an ownership change under Section 382 of the Code would not adversely impact in any material respect the time period in which the Company could use the NOLs, or materially impair the amount of the NOLs that could be used by the Company in any particular time period, for applicable tax purposes.

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Each share of Preferred Stock purchasable upon exercise of the Rights will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment equal to the greater of (i) $1.00 or (ii) 1,000 times the dividend, if any, declared per share of Common Stock. In the event of liquidation, dissolution or winding up of the Company, the holders of the Preferred Stock will be entitled to a minimum preferential liquidation payment of $1,000 per share (plus any accrued but unpaid dividends), provided that such holders of the Preferred Stock will be entitled to an aggregate payment of 1,000 times the payment made per share of Common Stock. Each share of Preferred Stock will have 1,000 votes and will vote together with the Common Stock. Finally, in the event of any merger, consolidation or other transaction in which shares of the Common Stock are exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per share of Common Stock. The Preferred Stock will not be redeemable. The Rights are protected by customary anti-dilution provisions. Because of the nature of the Preferred Stock s dividend, liquidation and voting rights, the value of one one-thousandth of a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock.

The Purchase Price payable, and the number of one one-thousandth of a share of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock or convertible securities at less than the current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness, cash, securities or assets (excluding regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or dividends payable in shares of Preferred Stock (which dividends will be subject to the adjustment described in clause (i) above)) or of subscription rights or warrants (other than those referred to above).

In the event that a person becomes an Acquiring Person or if the Company were the surviving corporation in a merger with an Acquiring Person and the Common Stock were not changed or exchanged, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring Person (which Rights will thereafter be null and void), will thereafter have the right to receive upon exercise that number of shares of Common Stock having a market value of two times the then current Purchase Price of the Right. In the event that, after a person has become an Acquiring Person, the Company were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction would have a market value of two times the then current Purchase Price of the Right.

At any time after a person becomes an Acquiring Person and prior to the earlier of one of the events described in the last sentence of the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the then outstanding Common Stock, the Board of Directors may cause the Company to exchange the Rights (other than Rights owned by an Acquiring Person which will have become null and void), in whole or in part, for shares of Common Stock at an exchange rate of one share of Common Stock per Right (subject to adjustment).

No adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Stock or Common Stock will be issued (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depository receipts), and in lieu thereof, a payment in cash will be made based on the market price of the Preferred Stock or Common Stock on the last trading date prior to the date of exercise.

The Rights may be redeemed in whole, but not in part, at a price of $.01 per Right (the *Redemption Price*) by the Board of Directors at any time prior to the time that an Acquiring Person has become such. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the

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Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company beyond those as an existing shareholder, including, without limitation, the right to vote or to receive dividends.

Any of the provisions of the Plan may be amended by the Board of Directors for so long as the Rights are then redeemable, and after the Rights are no longer redeemable, the Company may amend or supplement the Plan in any manner that does not adversely affect the interests of the holders of the Rights (other than an Acquiring Person).

A copy of the Plan has been filed with the Securities and Exchange Commission as an Exhibit to a Current Report on Form 8-K. A copy of the Plan is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Plan, which is incorporated herein by reference.

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APPENDIX F

FINANCIAL AND STOCK PERFORMANCE INFORMATION

The following graph compares total stockholder return on our common stock from December 31, 2006 to December 31, 2011 to two indices: the Nasdaq Composite Index and the Nasdaq Telecommunications Index.

The Nasdaq Composite Index is a broad-based index that tracks the aggregate price performance of over 3,000 domestic and international based common type stocks listed on The Nasdaq Stock Market. The Nasdaq Telecommunications Index tracks securities of Nasdaq-listed companies classified according to the Industry Classification Benchmark as Telecommunications and Telecommunications Equipment, including providers of fixed-line and mobile telephone services, and makers and distributors of high-technology communication products. The total return for our stock and for each index assumes the reinvestment of dividends, and is based on the returns of the component companies weighted according to their capitalizations as of the end of each annual period.

		INDEXED RETURNS Years Ending				
Company Name / Index	**Base Period 12/31/06**	**12/31/07**	**12/31/08**	**12/31/09**	**12/31/10**	**12/31/11**
Leap Wireless International, Inc.	100	78.43	45.22	29.51	20.62	15.62
Nasdaq Composite Index	100	110.26	65.65	95.19	112.10	110.81
Nasdaq Telecommunications Index	100	113.48	61.50	85.66	94.42	83.63

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You can now access your Leap Wireless International, Inc. account online.

Access your Leap Wireless International, Inc. account online via Investor ServiceDirect® (ISD).

The transfer agent for Leap Wireless International, Inc. now makes it easy and convenient to get current information on your shareholder account.

View account status	View payment history for dividends
View certificate history	Make address changes
View book-entry information	Obtain a duplicate 1099 tax form

Visit us on the web at http://www.bnymellon.com/shareowner/equityaccess

For Technical Assistance Call 1-877-978-7778 between 9am-7pm

Monday-Friday Eastern Time

Investor ServiceDirect®

Available 24 hours per day, 7 days per week

TOLL FREE NUMBER: 1-800-370-1163

Choose **MLink℠** for fast, easy and secure 24/7 online access to your future proxy materials, investment plan statements, tax documents and more. Simply log on to **Investor ServiceDirect®** at www.bnymellon.com/shareowner/equityaccess where step-by-step instructions will prompt you through enrollment.

Important notice regarding the Internet availability of proxy materials for the Annual Meeting of Stockholders. The Proxy Statement and the 2011 Annual Report to Stockholders are available at: **http://**

FOLD AND DETACH HERE

PROXY

LEAP WIRELESS INTERNATIONAL, INC.

Annual Meeting of Stockholders May 17, 2012

THIS PROXY IS SOLICITED BY THE BOARD OF DIRECTORS OF THE COMPANY

The undersigned hereby appoints S. Douglas Hutcheson, William D. Ingram and Robert J. Irving, Jr., and each of them, with power to act without the other and with power of substitution, as proxies and attorneys-in-fact and hereby authorizes them to represent and vote, as provided on the other side, all the shares of Leap Wireless International, Inc. Common Stock which the undersigned is entitled to vote, and, in their discretion, to vote upon such other business as may properly come before the 2012 Annual Meeting of Stockholders of the company to be held May 17, 2012 or at any adjournment or postponement thereof, with all powers which the undersigned would possess if present at the Meeting.

Address Change/Comments

(Mark the corresponding box on the reverse side)

SHAREOWNER SERVICES

P.O. BOX 3550
SOUTH HACKENSACK, NJ 07606-9250

(Continued and to be marked, dated and signed, on the other side) 21150

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YOUR VOTE IS IMPORTANT. PLEASE VOTE TODAY.

We encourage you to take advantage of Internet or telephone voting.

Both are available 24 hours a day, 7 days a week.

Internet and telephone voting is available through 11:59 PM Eastern Time the day prior to the shareholder meeting date.

LEAP WIRELESS INTERNATIONAL, INC.

INTERNET

http://www.proxyvoting.com/leap

Use the Internet to vote your proxy. Have your proxy card in hand when you access the web site.

OR

TELEPHONE

1-866-540-5760

Use any touch-tone telephone to vote your proxy. Have your proxy card in hand when you call.

If you vote your proxy by Internet or by telephone, you do NOT need to mail back your proxy card.

To vote by mail, mark, sign and date your proxy card and return it in the enclosed postage-paid envelope.

Your Internet or telephone vote authorizes the named proxies to vote your shares in the same manner as if you marked, signed and returned your proxy card.

21150

FOLD AND DETACH HERE

THIS PROXY WILL BE VOTED AS DIRECTED, OR IF NO DIRECTION IS INDICATED, WILL BE VOTED FOR ALL THE NOMINEES FOR DIRECTOR LISTED IN PROPOSAL 1, FOR PROPOSAL 2, FOR PROPOSAL 3, FOR PROPOSAL 4, FOR PROPOSAL 5, FOR

Please mark your votes as indicated in this example X

PROPOSAL 6, AGAINST PROPOSAL 7 AND FOR PROPOSAL 8.

1. ELECTION OF DIRECTORS **FOR ALL** **WITHOLD ALL** ***EXCEPTIONS**

Nominees:

01 John D. Harkey, Jr. 06 Mark H. Rachesky, M.D.

02 S. Douglas Hutcheson 07 Richard R. Roscitt

03 Ronald J. Kramer 08 Robert E. Switz

04 Robert V. LaPenta 09 Michael B. Targoff

05 Mark A. Leavitt

(INSTRUCTIONS: To withhold authority to vote for any individual nominee, mark the Exceptions box above and write that nominee s name in the space provided below.)

*Exceptions

2. To approve, on an advisory basis, named executive officer compensation. **FOR** **AGAINST** **ABSTAIN**

3. To reapprove the material terms of the performance goals under Leap s Executive Incentive Bonus Plan for the purpose of making awards under this plan eligible to be deducted under Section 162(m) of the Internal Revenue Code of 1986, as amended. **FOR** **AGAINST** **ABSTAIN**

4. To approve an amendment to add performance goals, stock appreciation rights, cash settlement of deferred stock units and cash-denominated awards under Leap s 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan (the 2004 Plan) for the purpose of making certain awards granted pursuant to the 2004 Plan eligible to be deducted under Section 162(m) of the Internal Revenue Code of 1986, as amended and to provide Leap with the flexibility to grant various cash-based awards under the 2004 Plan.

5. To approve an amendment clarifying that any awards granted under the 2004 Plan which are later surrendered by their holder for no consideration without having been exercised or settled may again be awarded under the 2004 Plan.

6. To approve Leap s Tax Benefit Preservation Plan.

7. To consider a stockholder proposal regarding majority voting in director elections, if properly presented at the Annual Meeting.

8. To ratify the selection of PricewaterhouseCoopers LLP as

Leap s independent registered public
accounting firm for the fiscal year
ending December 31, 2012.

Mark Here for Address Change or Comments ..

SEE REVERSE

NOTE: Please sign as name appears hereon. Joint owners should each sign. When signing as attorney,

executor, administrator, trustee or guardian, please give full title as such.

Signature _____ Signature _____ Date _____