

# QUALCOMM INC/DE

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 01/24/08

Address	5775 MOREHOUSE DR SAN DIEGO, CA 92121
Telephone	8585871121
CIK	0000804328
Symbol	QCOM
SIC Code	3663 - Radio and Television Broadcasting and Communications Equipment
Industry	Communications Equipment
Sector	Technology
Fiscal Year	09/30

## Table of Contents

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT  
 UNDER  
 THE SECURITIES ACT OF 1933**

**QUALCOMM INCORPORATED**

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction  
 of incorporation or organization)

95-3685934

(I.R.S. employer identification no.)

5775 MOREHOUSE DRIVE  
 SAN DIEGO, CALIFORNIA 92121  
 858-587-1121

(Address of principal executive offices)

Options to purchase common stock granted under the  
 Open Interface North America, Inc. 2001 Stock Option Plan, as Amended  
 assumed by QUALCOMM Incorporated

(Full title of the plan)

PAUL E. JACOBS  
 CHIEF EXECUTIVE OFFICER  
 QUALCOMM INCORPORATED  
 5775 MOREHOUSE DRIVE  
 SAN DIEGO, CALIFORNIA 92121  
 858-587-1121

(Name and address of agent for service)

This registration statement shall hereafter become effective in accordance with Rule 462 promulgated under the Securities Act of 1933, as amended.

CALCULATION OF REGISTRATION FEE

Title of Securities to be registered <sup>1</sup>	Amount to be registered <sup>2</sup>	Proposed maximum offering price per share <sup>3</sup>	Proposed maximum aggregate offering price <sup>3</sup>	Amount of registration fee
Common Stock Par Value \$.0001	109,586 <sup>4</sup>	\$32.91	\$3,606,227	\$141.72

<sup>1</sup> The securities to be registered include options to acquire common stock of QUALCOMM Incorporated ("Common Stock").

<sup>2</sup> Pursuant to Rule 416(a), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

<sup>3</sup> Calculated solely for the purposes of this offering under Rule 457(h) on the basis of the weighted average exercise price of the outstanding assumed options.

<sup>4</sup> Represents shares subject to issuance upon the exercise of outstanding stock options under the Open Interface North America, Inc. 2001 Stock Option Plan, as amended, and assumed by QUALCOMM Incorporated on December 24, 2007, pursuant to the Agreement and Plan of Reorganization By and Among QUALCOMM Incorporated, Osprey Acquisition Corporation, Open Interface North America, Inc. and Dashlight Systems, LLC, as Shareholders' Agent, made and entered into as of December 20, 2007.



## TABLE OF CONTENTS

### PART II

Item 3. Incorporation of Documents by Reference

Item 4. Description of Securities

Item 5. Interests of Named Experts and Counsel

Item 6. Indemnification of Directors and Officers

Item 7. Exemption from Registration Claimed

Item 8. Exhibits

Item 9. Undertakings

SIGNATURE

SIGNATURES AND POWER OF ATTORNEY

EXHIBIT INDEX

EXHIBIT 5

EXHIBIT 23.1

EXHIBIT 99.1

EXHIBIT 99.2

EXHIBIT 99.3

---

PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

QUALCOMM Incorporated (the “Company” or the “registrant”) hereby incorporates by reference in this registration statement on Form S-8 (the “registration statement”) the following documents:

(a) The Company’s annual report on Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), containing audited financial statements for the Company’s latest fiscal year ended September 30, 2007 as filed with the Securities and Exchange Commission on November 8, 2007.

(b) All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant document referred to in (a) above.

(c) The description of the Company’s Common Stock contained in the Company’s registration statement filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this registration statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

The class of securities to be offered is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel

Inapplicable.

## Table of Contents

### Item 6. Indemnification of Directors and Officers

Under Section 145 of the Delaware General Corporation Law, the Company has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the “Securities Act”). The Company’s Bylaws require the Company to indemnify its directors and executive officers and provide that the Company may indemnify its other officers to the full extent permitted by law. The Company believes that indemnification under its Bylaws covers at least negligence and gross negligence by officers and directors, and requires the Company to advance litigation expenses in the case of stockholder derivative actions or other actions, against an undertaking by the officer or director to repay such advances if it is ultimately determined that the officer or director is not entitled to indemnification. The Bylaws further provide that rights conferred under such Bylaws shall not be deemed to be exclusive of any other right such persons may have or acquire under any statute, provision of any Certificate of Incorporation, Bylaw, agreement, vote of stockholders, disinterested directors or otherwise.

In addition, the Company’s Certificate of Incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of the directors’ fiduciary duty of care to the Company and its stockholders. This provision in the Certificate of Incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director’s duty of loyalty to the Company, or acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director’s responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

The Company currently has a policy providing directors and officers’ liability insurance with insured directors and officers of the Company in certain circumstances. The policy also insures the Company against losses as to which its directors and officers are entitled to indemnification.

### Item 7. Exemption from Registration Claimed

Inapplicable.

### Item 8. Exhibits

See Exhibit Index.

### Item 9. Undertakings

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

## Table of Contents

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

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

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

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

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

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

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



SIGNATURE

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on January 24, 2008.

QUALCOMM Incorporated

By: /s/ Paul E. Jacobs  
Paul E. Jacobs, Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

The officers and directors of QUALCOMM Incorporated whose signatures appear below, hereby constitute and appoint PAUL E. JACOBS and WILLIAM E. KEITEL, and each of them, their true and lawful attorneys and agents, with full power of substitution, each with power to act alone, to sign and execute on behalf of the undersigned this registration statement on Form S-8, and any amendment or amendments thereto, and each of the undersigned does hereby ratify and confirm all that each of said attorney and agent, or their or his substitutes, shall do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Paul E. Jacobs</u> Paul E. Jacobs	Chief Executive Officer and Director (Principal Executive Officer)	January 24, 2008
<u>/s/ William E. Keitel</u> William E. Keitel	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	January 24, 2008
<u>/s/ Irwin Mark Jacobs</u> Irwin Mark Jacobs	Chairman of the Board	January 24, 2008
<u>/s/ Barbara T. Alexander</u> Barbara T. Alexander	Director	January 24, 2008
<u>/s/ Raymond V. Dittamore</u> Raymond V. Dittamore	Director	January 24, 2008
<u>/s/ Robert E. Kahn</u> Robert E. Kahn	Director	January 24, 2008
<u>/s/ Duane A. Nelles</u> Duane A. Nelles	Director	January 24, 2008
<u>/s/ Peter M. Sacerdote</u> Peter M. Sacerdote	Director	January 24, 2008
<u>/s/ Brent Scowcroft</u> Brent Scowcroft	Director	January 24, 2008
<u>/s/ Marc I. Stern</u> Marc I. Stern	Director	January 24, 2008

EXHIBIT INDEX

- 4.1 Restated Certificate of Incorporation of the Company, as amended, is incorporated by reference to Exhibit 99.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 13, 2006.
- 4.2 Certificate of Amendment of Certificate of Designation is incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2005.
- 4.3 Amended and Restated Bylaws of the Company are incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 22, 2006.
- 5 Opinion re legality
- 23 Consent of Counsel (included in Exhibit 5)
- 23.1 Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
- 24 Power of Attorney (included with the signature pages to this registration statement)
- 99.1 Open Interface North America, Inc. 2001 Stock Option Plan, as amended
- 99.2 Form of Open Interface North America, Inc. 2001 Stock Option Plan Stock Option Agreement(s)
- 99.3 Form of Open Interface North America , Inc. Stock Option Grant Notice and Stock Option Agreement



DLA PIPER US LLP  
4365 Executive Drive, Suite 1100, San Diego, CA 92121-2189  
Phone: 858-677-1400 Fax: 858-677-1477 www.dlapiper.com

January 24, 2008

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Ladies and Gentlemen:

As legal counsel for QUALCOMM Incorporated, a Delaware corporation (the "Company"), we are rendering this opinion in connection with the registration under the Securities Act of 1933, as amended, of up to 109,586 shares of the Common Stock, \$0.0001 par value (the "Registration Statement"), of the Company which may be issued pursuant to the exercise of options granted under the Open Interface North America, Inc. 2001 Stock Option Plan, as amended, (the "Plan") and assumed by QUALCOMM Incorporated.

We have examined all instruments, documents and records which we deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. We are admitted to practice only in the State of California and we express no opinion concerning any law other than the law of the State of California, the corporation laws of the State of Delaware and the federal law of the United States. As to matters of Delaware corporation law, we have based our opinion solely upon our examination of such laws and the rules and regulations of the authorities administering such laws, all as reported in standard, unofficial compilations. We have not obtained opinions of counsel licensed to practice in jurisdictions other than the State of California.

Based on such examination, we are of the opinion that the 109,586 shares of Common Stock which may be issued under the Plan and assumed by QUALCOMM Incorporated are duly authorized shares of the Company's Common Stock, and, when issued against receipt of the consideration therefor in accordance with the provisions of the Plan, will be validly issued, fully paid and nonassessable. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement referred to above and the use of our name wherever it appears in said Registration Statement.

Respectfully submitted,

DLA PIPER US LLP



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated November 8, 2007 relating to the financial statements, financial statement schedule, and the effectiveness of internal control over financial reporting, which appears in QUALCOMM Incorporated's Annual Report on Form 10-K for the year-ended September 30, 2007.

/s/ PricewaterhouseCoopers LLP  
San Diego, California  
January 24, 2008





**OPEN INTERFACE NORTH AMERICA, INC.****2001 STOCK OPTION PLAN****(AS AMENDED AND RESTATED AS OF DECEMBER 17, 2007)**

1. Purposes of the Plan . The purposes of this Stock Option Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Awards granted under the Plan may be Incentive Stock Options, Nonstatutory Stock Options or Restricted Stock Awards, as determined by the Administrator at the time of grant.

2. Definitions . As used herein, the following definitions shall apply:

(a) "409A Award" means an Award that is considered "nonqualified deferred compensation" within the meaning of Section 409A of the Code.

(b) "Administrator" means the Board or any of its Committees as shall be administering the Plan in accordance with Section 4 hereof.

(c) "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where Options are granted under the Plan.

(d) "Award" means an Option or a Restricted Stock Award.

(e) "Award Agreement" means an Option Agreement or a written agreement between the Company and the holder of a Restricted Stock Award evidencing the terms and conditions of an individual Award grant. Each Award Agreement shall be subject to the terms and conditions of the Plan.

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

(g) "Change in Control" means the occurrence of any of the following events:

(i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

---

(ii) The consummation of the direct or indirect sale or disposition by the Company of all or substantially all of the Company's assets, in one or more related transactions, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act); or

(iii) The consummation of a merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company with any other entity, other than a corporate transaction which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation;

provided, however, that a corporate transaction shall not constitute a Change of Control if (A) its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction; or (B) it constitutes a public offering that results in any security of the Company being listed (or approved for listing) on any securities exchange or designated (or approved for designation) as a national market security on an interdealer quotation system.

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

(i) "Committee" means a committee of Directors appointed by the Board in accordance with Section 4 hereof.

(j) "Common Stock" means the Common Stock of the Company.

(k) "Company" means Open Interface North America, Inc., a Washington corporation.

(l) "Consultant" means any natural person who is engaged by the Company or any Parent or Subsidiary to render consulting or advisory services to such entity and who satisfies the requirements of subsection (c)(1) of Rule 701 under the Securities Act.

(m) "Director" means a member of the Board.

(n) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(o) "Employee" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three (3) months following the 91st day of such leave, any Incentive Stock Option held by the Optionee shall cease to be treated as an

---

Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

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

(q) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by fair and reasonable means by the Administrator.

(r) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(s) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(t) "Option" means a stock option granted pursuant to the Plan.

(u) "Option Agreement" means a written agreement (including a written agreement delivered by electronic means) between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(v) "Optioned Stock" means the Common Stock subject to an Option.

(w) "Optionee" means the holder of an outstanding Option granted under the Plan.

(x) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(y) "Participant" means an Optionee or the recipient of a Restricted Stock Award under the Plan.

---

(z) “Plan” means this 2001 Stock Option Plan.

(aa) “Restricted Stock Award” means any Award granted pursuant to Section 13.

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

(cc) “Service Provider” means an Employee, Director or Consultant.

(dd) “Share” means a share of the Common Stock, as adjusted in accordance with Section 15 below.

(ee) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares that may be subject to Awards and sold under the Plan is 12,536,267 Shares. The Shares may be authorized but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, Shares that have actually been issued under the Plan, upon exercise of an Option, shall not be returned to the Plan and shall not become available for future distribution under the Plan. Notwithstanding the foregoing, if Shares of restricted stock issued pursuant to an Award are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

#### 4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Board or a Committee appointed by the Board, which Committee shall be constituted to comply with Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Awards may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such Award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

---

(v) to determine the terms and conditions of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws;

(vii) to allow Participants to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or grant of a Restricted Stock Award that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Participants to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

(viii) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Participants.

5. Eligibility for Options. Nonstatutory Stock Options may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations on Options.

(a) Incentive Stock Option Limit. Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Nonstatutory Stock Option Limit. Unless the Administrator determines otherwise, Nonstatutory Stock Options awarded under this Plan are intended to meet the requirements for exclusion from coverage under Section 409A of the Code; therefore, all Nonstatutory Stock Options not specifically designated as a 409A Award shall be construed and administered in accordance with Section 409A. Without limiting the foregoing, all Nonstatutory Option Awards not designated as a 409A Award shall have an exercise price not less than 100% of the Fair Market Value of the Common Stock on the date of grant.

---

7. At-Will Employment. Neither the Plan nor any Award shall confer upon any Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate such relationship at any time, with or without cause, and with or without notice.

8. Term of Plan. Subject to shareholder approval in accordance with Section 21, the Plan shall become effective upon its adoption by the Board. Unless sooner terminated under Section 17, it shall continue in effect for a term of ten (10) years from the later of (i) the effective date of the Plan, or (ii) the date of the most recent Board approval of an increase in the number of shares reserved for issuance under the Plan; provided, however that no Incentive Stock Option may be granted under the Plan more than ten years from the effective date of the Plan.

9. Term of Award. The term of each Award shall be stated in the Award Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

10. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted to a Service Provider who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Service Provider, the per Share exercise price (1) shall be no less than 100% of Fair Market Value per Share on the date of grant

---

for all such Options other than 409A Awards, and (2) in the case of 409A Awards, shall be no less than 85% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction, provided such grants are in accordance with all Applicable Laws, including but not limited to Code Section 409A.

(b) Forms of Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of, without limitation, (1) cash, (2) check, (3) promissory note, (4) other Shares, provided Shares acquired directly from the Company (x) have been owned by the Optionee for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or (6) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company. Notwithstanding the foregoing, the Administrator may permit an Optionee to exercise his or her Option by delivery of a full-recourse promissory note secured by the purchased Shares. The terms of such promissory note shall be determined by the Administrator in its sole discretion.

#### 11. Exercise of Option.

(a) Procedure for Exercise: Rights as a Shareholder. Any Option granted hereunder shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. Except in the case of Options granted to officers, Directors and Consultants, Options shall become exercisable at a rate of no less than 20% per year over five (5) years from the date the Options are granted. Unless the Administrator provides otherwise, vesting of Options granted hereunder to officers and Directors shall be suspended during any unpaid leave of absence. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives (i) written notice of exercise in accordance with the Option Agreement (including written notice transmitted by electronic means) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend

---

or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider . If an Optionee ceases to be a Service Provider, such Optionee may exercise his or her Option within thirty (30) days of termination, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee . If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within six (6) months of termination, or such longer period of time as specified in the Option Agreement, to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee . If an Optionee dies while a Service Provider, the Option may be exercised within six (6) months following Optionee's death, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of death (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement) by the Optionee's designated beneficiary, provided such beneficiary has been designated prior to Optionee's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Optionee, then such Option may be exercised by the personal representative of the Optionee's estate or by the person(s) to whom the Option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. If, at the time of death, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

12. Limited Transferability of Options . Unless determined otherwise by the Administrator, Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or the laws of descent and distribution, and may be exercised during the lifetime of the Optionee, only by the Optionee. If the Administrator in its sole discretion makes an Option transferable, such Option may only be transferred by (i) will, (ii) the laws of descent and distribution, (iii) instrument to an inter vivos or testamentary trust in

---



which the Option is to be passed to beneficiaries upon the death of the Optionee, or (iv) gift to a member of Optionee's immediate family (as such term is defined in Rule 16a-1(e) of the Exchange Act). In addition, any transferable Option shall contain additional terms and conditions as the Administrator deems appropriate.

### 13. Restricted Stock Awards.

A Restricted Stock Award is an Award of actual shares of Common Stock (so-called "restricted stock") which may, but need not, provide that such Restricted Stock Award may not be sold, assigned, transferred or otherwise disposed of, pledged, hypothecated as collateral for a loan or as a security for the performance of any obligation or for any other purpose for such period (the "Restricted Period") as the Administrator shall determine. The terms and conditions of the Restricted Stock Award may change from time to time, and the terms and conditions of separate Restricted Stock Awards need not be identical, but each Restricted Stock Award shall include (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) the substance of each of the following provisions, to the extent applicable:

(a) Purchase Price. The purchase price of Restricted Stock Awards, if any, shall be determined by the Administrator, and may be stated as cash, property or services.

(b) Consideration. The cash consideration, if any, for Shares acquired pursuant to a Restricted Stock Award shall be paid either (i) in cash at the time of purchase; or (ii) in any other form of legal consideration that may be acceptable to the Administrator in its discretion, including, without limitation, a recourse promissory note, property or shares of Common Stock that the Administrator determines have a value at least equal to the Fair Market Value of the Shares subject to the Award and that the Participant has held for at least six months.

(c) Vesting. Shares acquired under or subject to the Restricted Stock Award may, but need not, be subject to a Restricted Period during which such shares will be forfeited to the Company if the specified restrictions or conditions for the Restricted Stock Award are not satisfied. The Administrator in its sole discretion may provide, either in the Award Agreement or by subsequent determination, for acceleration of the end of the Restricted Period at any time, in which event all restrictions and conditions shall lapse or be deemed satisfied, as the case may be.

(d) Termination of Relationship as a Service Provider. Unless otherwise provided in the Award Agreement for a Restricted Stock Award, if a Participant ceases to be a Service Provider, the Participant shall forfeit the unvested portion of a Restricted Stock Award acquired in consideration of prior or future services, and all of the Shares held by the Participant that have not vested as of the date of termination under the terms of the Restricted Stock Award shall be forfeited and the Participant shall have no further rights with respect to the unvested portion of the Award. The Shares forfeit upon such termination shall revert to the Plan.

(e) Transferability. Rights to acquire Shares under a Restricted Stock Award shall be transferable by the Participant only upon such terms and conditions as are set forth in the Award Agreement, as the Administrator shall determine in its discretion, so long as Shares awarded under the Restricted Stock Award remain subject to the terms of the Award Agreement.

---

(f) Concurrent Tax Payment. The Administrator, in its sole discretion, may (but shall not be required to) provide payment for a concurrent cash award in an amount equal, in whole or in part, to the estimated after-tax amount required to satisfy applicable federal, state or local tax withholding obligations arising from the receipt and deemed vesting of restricted stock for which an election under Section 83(b) of the Code may be required.

(g) Lapse of Restriction. Upon the expiration or termination of the Restricted Period and the satisfaction of any other conditions prescribed by the Administrator, the restrictions applicable to the Restricted Stock Award shall lapse and a stock certificate for the number of Shares with respect to which the restrictions have lapsed shall be delivered, free of any restrictions except those that may be imposed by law, the terms of the Plan or the terms of a Restricted Stock Award, to the Participant or the Participant's estate, as the case may be. The Company shall not be required to deliver any fractional Share, but will pay, in lieu thereof, the Fair Market Value of such fractional Share in cash to the Participant or the Participant's estate, as the case may be.

14. Additional Conditions Applicable to Nonqualified Deferred Compensation under Section 409A of the Code.

If any Option under this Plan is granted with an exercise price less than the Fair Market Value of the Shares subject to the Award on the Date of Grant (regardless of whether or not such exercise price is intentionally or unintentionally priced at less than Fair Market Value, or such Award is materially modified and deemed a new Award at a time when the Fair Market Value exceeds the exercise price), or is otherwise determined to constitute a 409A Award, the following additional conditions shall apply and shall supersede any contrary provisions of this Plan or the terms of any Award Agreement for the 409A Award.

(a) Exercise. No 409A Award shall be exercisable earlier than upon one of the following:

(i) Specified Time. A specified time or a fixed schedule set forth in the written instrument evidencing the 409A Award, but not later than the expiration of 10 years from the date of grant of such Award. If the written Award Agreement does not specify a fixed time or schedule, such time shall be the date that is the fifth anniversary of the date of the grant of such Award.

(ii) Separation from Service. Separation from service (within the meaning of Section 409A of the Code) by the 409A Award recipient; provided, however, if the 409A Award recipient is a "key employee" (as defined in Section 416(i) of the Code without regard to paragraph (5) thereof) and any of the Company's stock is publicly traded on an established securities market or otherwise, exercise under this subsection (ii) may not be made before the date that is six months after the date of separation from service.

(iii) Death. The date of death of the 409A Award recipient.

(iv) Disability. The date the 409A Award recipient becomes disabled (within the meaning of Section 14(d)(ii) hereof).

---

(v) Unforeseeable Emergency. The occurrence of an unforeseeable emergency (within the meaning of Section 14(d)(iii) hereof), but only if the net value (after payment of the exercise price) of the number of Shares that become issuable does not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the exercise, after taking into account the extent to which the emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's other assets (to the extent such liquidation would not itself cause severe financial hardship).

(vi) Change in Control Event. The occurrence of a Change in Control Event (within the meaning of Section 14(d)(1) hereof), including the Company's discretionary exercise of the right to accelerate vesting of such Award upon a Change in Control Event or to terminate the Plan or any 409A Award granted hereunder within 12 months of the Change in Control Event.

(b) Term. Notwithstanding anything to the contrary in this Plan or the terms of any 409A Award Agreement, the term of any 409A Award shall expire and such Award shall no longer be exercisable on the date that is the later of: (a) 2-1/2 months after the end of the Company's taxable year in which the 409A Award first becomes exercisable pursuant to this Section 14 and is not subject to a substantial risk of forfeiture; or (b) 2-1/2 months after the end of the 409A Award recipient's taxable year in which the 409A Award first becomes exercisable pursuant to this Section 14 and is not subject to a substantial risk of forfeiture, but not later than the earlier of (i) the expiration of 10 years from the date the 409A Award was granted, or (ii) the term specified in the 409A Award agreement.

(c) No Acceleration. A 409A Award may not be accelerated or exercised prior to the time specified in this Section 14, except in the case of one of the following events:

(i) Domestic Relations Order. The 409A Award may permit the acceleration of the exercise time or schedule to an individual other than the Participant as may be necessary to comply with the terms of a domestic relations order (as defined in Section 414(p)(1)(B) of the Code).

(ii) Conflicts of Interest. The 409A Award may permit the acceleration of the exercise time or schedule as may be necessary to comply with the terms of a certificate of divestiture (as defined in Section 1043(b)(2) of the Code).

(iii) Change in Control Event. The Administrator may exercise the discretionary right to accelerate the vesting of such 409A Award upon a Change in Control Event or to terminate the Plan or any 409A Award granted thereunder within 12 months of the Change in Control Event and cancel the 409A Award for compensation. In addition, the Administrator may exercise the discretionary right to accelerate the vesting of such 409A Award provided that such acceleration does not change the time or schedule of exercise of such Award and otherwise satisfies the requirements of this Section 14 and the requirements of Section 409A of the Code.

---

(d) Definitions. Solely for purposes of this Section 14 and not for other purposes of the Plan, the following terms shall be defined as set forth below:

(i) “Change in Control Event” means the occurrence of a change in the ownership of the Company, a change in effective control of the Company, or a change in the ownership of a substantial portion of the assets of the Company (as defined in Proposed Regulations Section 1.409A-3(g)(5) and any subsequent guidance interpreting Code Section 409A). For example, a Change in Control Event will occur if a person or more than one person acting as a group:

(A) acquires ownership of stock that brings such person’s or group’s total ownership in excess of 50% of the outstanding stock of the Company; or

(B) acquires ownership of 35% or more of the total voting power of the Company within a 12 month period; or

(C) acquires ownership of assets from the Company equal to 40% or more of the total value of the Company within a 12 month period.

(ii) “Disabled” means a Participant (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering Employees.

(iii) “Unforeseeable Emergency” means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant’s spouse, or a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant’s property due to casualty, or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

15. Adjustments Upon Changes in Capitalization, Merger or Change in Control.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number and type of Shares which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Award, and the number and type of Shares covered by each outstanding Award, as well as the price per Share covered by each outstanding Award, shall be proportionately adjusted for any increase or decrease in the number or type of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company. The conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or

---

securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number, type or price of Shares subject to an Award.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Participant as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option until fifteen (15) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option or granted pursuant to a Restricted Stock Award shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Change in Control. In the event of a merger of the Company with or into another corporation, or a Change in Control, each outstanding Option shall be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. If, in such event, the Option is not assumed or substituted, the Option shall terminate as of the date of the closing of the merger or Change in Control. For the purposes of this paragraph, the Option shall be considered assumed if, following the merger or Change in Control, the Option confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option immediately prior to the merger or Change in Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, for each Share of Optioned Stock subject to the Option, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of common stock in the merger or Change in Control.

16. Time of Granting Awards. The date of grant of an Award shall, for all purposes, be the date on which the Administrator makes the determination granting such Award, or such later date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Award is so granted within a reasonable time after the date of such grant.

17. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Shareholder Approval. The Board shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

---

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

(d) The Plan is designed and intended, to the extent applicable, to satisfy Section 409A of the Code and any other Applicable Law and shall be construed in a manner to so comply. Notwithstanding this or any other provision of the Plan to the contrary, the Administrator may amend the Plan in any manner, or take any other action, that it determines, in its reasonable discretion exercised in good faith, is necessary, appropriate or advisable to cause the Plan and Awards granted thereunder to comply with Section 409A and any guidance issued thereunder. Any such action, once taken, shall be deemed to be effective from the earliest date necessary to avoid a violation of Section 409A and shall be final, binding and conclusive on all Participants and other individuals having or claiming any right or interest under the Plan.

18. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option or the grant of a Restricted Stock Award unless the grant and/or exercise of such Award and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option or receipt of Shares under a Restricted Stock Award, the Administrator may require the person exercising such Option or entitled to such Shares to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

19. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

20. Reservation of Shares. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

21. Shareholder Approval. The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under Applicable Laws.

22. Information to Participants. The Company shall provide to each Participant and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually

---

during the period such Optionee has one or more Options outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan through a Restricted Stock Award or otherwise, during the period such individual owns such Shares, copies of annual financial statements. The Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.





**OPEN INTERFACE NORTH AMERICA, INC.**  
**2001 STOCK OPTION PLAN**  
**STOCK OPTION AGREEMENT**

Unless otherwise defined herein, the terms defined in the 2001 Stock Option Plan (the “**Plan**”) shall have the same defined meanings in this Stock Option Agreement (this “**Option Agreement**”). The undersigned Optionee hereby acknowledges and agrees that this Stock Option Agreement restates in its entirety the 2001 Stock Option Plan Stock Option Agreement which was previously issued by the Company to the Participant with a Date of Grant of \_\_\_\_\_, 200\_\_ (the “**Prior Agreement**”). This Option Agreement is entered into solely in order to correct certain clerical errors inadvertently included in the Prior Agreement. The undersigned Optionee hereby further acknowledges and agrees that this Option Agreement shall govern the terms of the Option previously represented by the Prior Agreement, reflects the originally intended and approved terms of the Option and supersedes and replaces the Prior Agreement and upon execution hereof the Prior Agreement shall be terminated and of no further force and effect.

**I. NOTICE OF STOCK OPTION GRANT**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

The undersigned Optionee has been granted an Option to purchase shares of Common Stock of the Company (the “**Shares**”), subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant: \_\_\_\_\_

Vesting Commencement Date \_\_\_\_\_

Exercise Price per Share \_\_\_\_\_

Fair Market Value of Shares on Date of Grant \_\_\_\_\_

Total Number of Shares Granted \_\_\_\_\_

Total Exercise Price \_\_\_\_\_

Type of Option:                   \_\_\_ Incentive Stock Option  
    \_\_\_ Nonstatutory Stock Option  
    \_\_\_ 409A Award (Nonstatutory Stock Option granted at less than  
    Fair Market Value)

Term/Expiration Date: \_\_\_\_\_

Exercise Date, if applicable (409A Award only) \_\_\_\_\_



Vesting Schedule :

This Option shall be exercisable, in whole or in part, according to the following vesting schedule:

[25% of the total Shares subject to the Option shall vest on the one (1) year anniversary of the Vesting Commencement Date, and 1/48 of the total Shares subject to the Option shall vest each month thereafter, subject to Optionee continuing to be a Service Provider on such dates.]

[1/24th of the total Shares subject to this Option shall vest each month, subject to Optionee continuing to be a Service Provider on such dates.]

[55.625% of the total Shares subject to the Option shall vest immediately, and 1/48th of the total Shares subject to the Option shall vest each month thereafter, subject to Optionee continuing to be a Service Provider on such dates.]

[50% of the total Shares subject to the Option shall vest immediately on the Vesting Commencement Date, and 1/24th of the total Shares subject to the Option shall vest each month thereafter, subject to Optionee continuing to be a Service Provider on such dates.]

[100% of the total Shares subject to the Option shall vest on the Vesting Commencement Date.]

Notwithstanding the foregoing and anything contrary in the Plan, to the extent the successor corporation in a merger or Change in Control refuses to assume or substitute for this Option, then the Optionee shall fully vest in and have the right to exercise this Option as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If this Option becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or Change in Control, the Administrator shall notify the Optionee in writing or electronically that this Option shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and this Option shall terminate upon the expiration of such period.

Termination Period :

This Option shall be exercisable for three (3) months after Optionee ceases to be a Service Provider. Upon Optionee's death or Disability, this Option may be exercised for one (1) year after Optionee ceases to be a Service Provider. In no event may Optionee exercise this Option after the Term/Expiration Date as provided above. [This Option shall be exercisable for three (3) months following the *later* of: (i) three (3) months after Optionee ceases to be a Service Provider or (ii) the effective date of a Change in Control of the Company. In no event may Optionee exercise this Option after the Term/Expiration Date as provided above.]

409A Awards :

If this Option is a 409A Award, the provisions of Section 14 of the Plan shall apply. If no exercise date is set forth in Section 1 of this Option Agreement, the exercise date shall be the fifth anniversary of the Date of Grant.

---

## II. AGREEMENT

1. Grant of Option. The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant (the “**Optionee**”), an option (the “**Option**”) to purchase the number of Shares set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the “**Exercise Price**”), and subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 17(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Grant as an Incentive Stock Option (“**ISO**”), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option (“**NSO**”).

### 2. Exercise of Option.

(a) Right to Exercise. This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and with the applicable provisions of the Plan and this Option Agreement. Notwithstanding the foregoing, if this Option is a 409A Award, it shall only be exercisable in accordance with Section 14 of the Plan.

(b) Method of Exercise. This Option shall be exercisable by delivery of an exercise notice in the form attached as Exhibit A (the “**Exercise Notice**”) which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

3. Optionee’s Representations. In the event the Shares have not been registered under the Securities Act of 1933, as amended, at the time this Option is exercised, the Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

4. Lock-Up Period. Optionee hereby agrees that Optionee shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Optionee (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred eighty (180) days following the effective date of any registration statement of the Company filed under the Securities Act.

---

Optionee agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, Optionee shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred eighty (180) day period. Optionee agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section.

5. Method of Payment . Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) cash or check;

(b) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Plan; or

(c) surrender of other Shares which, (i) in the case of Shares acquired from the Company, either directly or indirectly, have been owned by the Optionee for more than six (6) months on the date of surrender, and (ii) have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares.

6. Restrictions on Exercise . This Option may not be exercised until such time as the Plan has been approved by the shareholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law.

7. Non-Transferability of Option . This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

8. Term of Option . This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

9. Tax Obligations .

(a) Withholding Taxes . Optionee agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Optionee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.

---

(b) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Optionee herein is an ISO, and if Optionee sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (1) the date two years after the Date of Grant, or (2) the date one year after the date of exercise, the Optionee shall immediately notify the Company in writing of such disposition. Optionee agrees that Optionee may be subject to income tax withholding by the Company on the compensation income recognized by the Optionee.

10. Section 409A. Optionee acknowledges that, under Section 409A of the Code, receipt of a stock option with an exercise price per share that is less than the fair market value of the stock subject to the option at the time of grant can result in significant adverse tax consequences to the Optionee, including without limitation the imputation of taxable income to the Optionee on the difference between the exercise price and fair market value as the option vests and the imposition of an additional excise tax on the Optionee. The Company does not make any representation to Optionee that the Exercise Price of this Option was equal to the fair market value per share of the Shares as of the Date of Grant. Participant acknowledges and agrees that neither the Company, nor its officers, directors, shareholders, employees, attorneys, agents, successors or assigns, shall have any liability to Optionee should it be determined hereafter that the Exercise Price of this Option is less than the fair market value per share of the Shares as of the Date of Grant. If Optionee desires advice regarding Section 409A of the Code with respect to this Option, Optionee should consult with his or her own tax and/or financial advisors. Optionee acknowledges that he or she is under no obligation to accept this Option.

11. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This agreement is governed by the internal substantive laws but not the choice of law rules of Washington.

12. No Guarantee of Continued Service. OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

---

Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

OPTIONEE

OPEN INTERFACE NORTH AMERICA, INC.  
a Washington corporation

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*By*

\_\_\_\_\_  
*Print Name*

Rick Romatowski, Chief Operating Officer  
*Print Name, Title*

\_\_\_\_\_  
*Residence Address*

520 Pike Street, Suite 1770  
Seattle, WA 98101  
*Company Address*



**FORM OF STOCK OPTION GRANT NOTICE**

Open Interface North America, Inc. (the "Company"), pursuant to the Open Interface North America, Inc. 2001 Stock Option Plan (the "Plan"), hereby grants to \_\_\_\_\_ (the "Optionee") a nonqualified stock option to purchase the aggregate number of shares of the Company's common stock ("Shares"), subject to all of the terms and conditions set forth below and in the attached Stock Option Agreement (the "Agreement"). The Option is a nonqualified stock option and is not intended to qualify for the federal income tax benefits available to an "incentive stock option" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). Except as specifically provided in the Agreement, the term "Company" as used in this grant notice ("Grant Notice") and in the Agreement shall include any successor or any parent corporation.

Optionee:

Option Type: Nonqualified

Shares Subject to Option:

Date of Grant: December \_\_, 2007. The Option grant is made contingent upon the occurrence of the "Effective Time" (as defined in that certain Agreement and Plan of Reorganization, dated as of December \_\_, 2007 (the "Merger Agreement"), by and among the Company, QUALCOMM Incorporated, a Delaware corporation ("Parent"), Open Interface North America, an Acquisition Corporation ("Merger Sub") and the Holders' Agent defined therein).

Expiration Date: December \_\_, 2017

Exercise Price Per Share: \$ \_\_\_\_\_ per share

**Vesting Schedule**

<u>Exercisable Shares</u>	<u>Full Vesting Date</u>	<u>Expiration Date**</u>
«Shares_Period_1»	«Vest_Date_Period_1»	«Expiration_Date_Period_1»
*«Shares_Period_2»	«Vest_Date_Period_2»	«Expiration_Date_Period_2»

\* These Shares vest on each monthly anniversary date after [Vesting Date 1] as to 1/60th of the total shares granted. However, if the Date of Grant is on the 30th of the month, subsequent monthly vesting will occur on the last day of each month after [Vesting Date 1] as to 1/60th of the total shares granted.

\*\* As an administrative matter, the vested portion of this Option may be exercised only until the close of the Nasdaq Global Select Market on the Expiration Date or the termination date set forth under Section 2.5 of the Agreement or, if such date is not a trading day on the Nasdaq Global Select Market, the last trading day before such date. Any later attempt to exercise this Option will not be honored. For example, if Optionee ceases to perform services for the Company as provided in Section 2.5(a)(vii) of the Agreement and the date thirty (30) days after the date of termination of service is Monday, July 4 (a holiday on which the Nasdaq Global Select Market is closed), Optionee must exercise the exercisable portion of this Option by 4.00 p.m. U.S. Eastern Daylight Time on Friday, July 1.



**Additional Terms/Acknowledgments:** Capitalized terms used but not defined in this Grant Notice and in the Agreement shall have the meanings given thereto in the Merger Agreement. The Optionee acknowledges receipt of this Grant Notice, the Agreement and a copy of the Plan, and represents that the Optionee has read, understands, accepts and agrees to the terms and conditions of this Grant Notice, the Agreement and the Plan. Optionee hereby accepts the Option subject to all of its terms and conditions and further acknowledges that as of the Date of Grant, this Grant Notice, the Stock Option Agreement and the Plan set forth the entire understanding between Optionee and the Company regarding the acquisition of Shares of the Company and supersede all prior oral and written agreements pertaining to this particular option. The Optionee also understands that the Option will not be exercisable until the Company has received an exercise agreement or similar notice (“Notice”) in the form required by the Company from the Optionee.

**Note: The Optionee is solely responsible for any election to exercise the Option, and the Company shall have no obligation whatsoever to provide notice to the Optionee of any matter, including, but not limited to, the date the Option terminates.**

*Signatures on following page]*

---

IN WITNESS WHEREOF, the parties hereto have executed this Grant Notice and the Agreement as of the Date of Grant set forth above.

Open Interface North America, Inc.

By: \_\_\_\_\_  
Name:  
Title:

Optionee

By: \_\_\_\_\_  
Name

Attachment: Stock Option Agreement

---

**FORM OF**  
**OPEN INTERFACE NORTH AMERICA, INC.**  
**2001 STOCK OPTION PLAN**  
**EMPLOYEE STOCK OPTION AGREEMENT**

Pursuant to the Grant Notice (attached hereto) and this Stock Option Agreement, Open Interface North America, Inc. (the "Company") has granted you an Option to purchase the number of shares of the Company's common stock ("Stock") indicated in the Grant Notice at the exercise price indicated in the Grant Notice.

The details of this Option are as follows:

**1. SERVICE AND VESTING .**

**1.1 SERVICE.** Notwithstanding any other provision of this Agreement, the Company reserves the right, in its sole discretion, to determine when your service has terminated, including in the event of any leave of absence or part-time service.

**1.2 VESTING.** Except as otherwise provided in the Plan or this Agreement, this Option will vest as provided in the Grant Notice. Notwithstanding any other provision of the Plan or this Agreement, the Company reserves the right, in its sole discretion, to suspend vesting of this Option in the event of any leave of absence or your part-time service.

**2. EXERCISE OF THE OPTION .**

**2.1 METHOD OF EXERCISE .** Subject to the terms of this Agreement, you may exercise the vested portion of this Option at any time prior to the expiration of the Option by delivering a notice of exercise in such form as may be designated by the Company from time to time together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours and prior to the expiration of the Option, together with such additional documents as the Company may then require.

**2.2 METHOD OF PAYMENT.** Payment of the exercise price may be by cash (or check), or pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board which, prior to the issuance of Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to a broker which provides for the payment of the aggregate exercise price to the Company, or a combination of the above methods, as the Company may designate from time to time.

**2.3 TAX WITHHOLDING .** By exercising this Option you agree that as a condition to any exercise of this Option, the Company may withhold from your pay and any other amounts payable to you, or require you to enter an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of this Option; (2) the lapse of any substantial risk of forfeiture to which the Stock is subject at the time of exercise; or (3) the disposition of Stock acquired upon such exercise.

**2.4 RESPONSIBILITY FOR EXERCISE.** You are responsible for taking any and all actions as may be required to exercise this Option in a timely manner and for properly executing any such documents as may be required for exercise in accordance with such rules and procedures as may be established from time to time. By signing this Agreement you acknowledge that information regarding the procedures and requirements for this exercise of the Option is available to you on request. The Company shall have no duty or obligation to notify you of the expiration date of this Option.

**2.5 EFFECT OF TERMINATION OF SERVICE .**

(a) **Option Exercisability .** Subject to earlier termination of the Option as otherwise provided herein and unless otherwise provided by the Committee in the Grant Notice, the Option shall be exercisable after your termination of service with the Company only during the applicable time period determined in accordance with this Section and thereafter shall terminate.

(i) **Disability.** If your service with the Company terminates because of your Disability (as defined below), the Option shall continue to vest for the period of such Disability under the terms and conditions of the Option Agreement and may be exercised by you at any time during the period of Disability but in any event no later than the date of expiration of the Option's term set forth in Section 4 (the "**Option Expiration Date**").

(ii) **Death.** If your service with the Company terminates because of your death or because of your Disability and such termination is subsequently followed by your death, the vesting of the Option shall be accelerated effective upon your death, and the Option may be exercised by your legal representative or other person who acquired the right to exercise the Option by reason of your death at any time prior to the expiration of twelve (12) months after the date of your death, but in any event no later than the Option Expiration Date.

(iii) **Normal Retirement Age.** If your service with the Company terminates on or after you have attained age 60 and completed ten (10) years of service, the Option, to the extent unexercised and vested on the date on which your service terminates, may be exercised by you at any time prior to the expiration of twelve (12) months after the date on which your service terminates, but in any event no later than the Option Expiration Date. Options that have not vested as of the date on which your service terminates will be forfeited as of your termination date.

(iv) **Termination After Layoff.** If your service with the Company terminates as a result of "Layoff" (as defined below), then, subject to your execution of a general release of claims satisfactory to the Company, (A) the vesting of the Option shall be accelerated effective as of the date on which your service terminates by ten percent (10%) of the shares which would otherwise be unvested on such date, and (B) the Option, to the extent unexercised and vested on the date on which your service terminated, may be exercised by you (or your guardian or legal representative) at any time prior to the expiration of six (6) months after the date on which your service terminated, but in any event no later than the Option Expiration Date. All other unvested Options shall be forfeited as of your termination date. Notwithstanding the foregoing, if the Company determines that the provisions or operation of this subsection (iv) would cause the Company to incur a compensation expense other than that

which is known by the Company as of the date of grant, then this subsection (iv) shall be without force or effect, and the vesting and exercisability of each outstanding Option and any shares acquired upon the exercise thereof shall be determined under any other applicable provision of the Grant Notice or this Option Agreement.

(v) **Termination Upon Transfer to Non-Control Affiliate.** If at the request of the Company, you transfer service to a Non-Control Affiliate and your service terminates as a result, then, subject to your execution of a general release of claims form reasonably satisfactory to the Company, the Option, to the extent unexercised and vested on the date on which your service terminates, may be exercised by you (or your guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which your service terminated, but in any event no later than the Option Expiration Date. Options that have not vested as of the date on which your service terminates will be forfeited as of your termination date.

(vi) **Termination After Change in Control.** If your service with the Company terminates as a result of Termination After Change in Control (as defined below), then the vesting of the Option shall be accelerated effective as of the date on which the your service terminates, and the Option, to the extent unexercised, may be exercised by you (or your guardian or legal representative) at any time prior to the expiration of six (6) months after the date on which your service terminates, but in any event no later than the Option Expiration Date.

(vii) **Other Termination of Service.** Except as otherwise provided in Section 2.5(a)(i) through (vi), if your service with the Company or any Participating Company terminates for any reason then to the extent unexercised and vested on the date on which your service terminates, the Option may be exercised by you at any time prior to the expiration of thirty (30) days after the date on which your service terminates, but in any event no later than the Option Expiration Date. Options that have not vested as of the date on which your service terminates will be forfeited as of your termination date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, other than termination for Cause, if the exercise of the Option within the applicable time periods set forth in Section 2.5(a) is prevented by the provisions of applicable law, the Option shall remain exercisable until three (3) months after the date you are notified by the Company that the Option is exercisable, but in any event no later than the Option Expiration Date.

(c) **Extension if Subject to Section 16(b) .** Notwithstanding the foregoing, other than termination for Cause, if a sale within the applicable time periods set forth in Section 2.5(a) of shares acquired upon the exercise of the Option would subject you to suit under Section 16 (b) of the Exchange Act, the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which a sale of such shares by you would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after your termination of service, or (iii) the Option Expiration Date.

(d) **Certain Definitions.**

(i) **“Cause”** shall mean any of the following: (1) your theft, dishonesty, or falsification of any Participating Company documents or records; (2) your improper use or disclosure of a Participating Company’s confidential or proprietary information; (3) any action by you which has a detrimental effect on a Participating Company’s reputation or business; (4) your failure or inability to perform any reasonable assigned duties after written notice from a Participating Company of, and a reasonable opportunity to cure, such failure or inability; (5) any material breach by you of any employment or service agreement between you and a Participating Company, which breach is not cured pursuant to the terms of such agreement; (6) your conviction (including any plea of guilty or nolo contendere) of any criminal act which impairs your ability to perform your duties with a Participating Company; or (7) violation of a material Company policy.

(ii) **“Disability”** shall mean you have been determined by the Company’s long-term disability insurer as eligible for disability benefits under the long-term disability plan of the Company or you have been determined eligible for Supplemental Security Income benefits by the Social Security Administration of the United States of America.

(iii) **“Good Reason”** shall mean any one or more of the following:

a) without your express written consent, the assignment to you of any duties, or any limitation of your responsibilities, substantially inconsistent with your positions, duties, responsibilities and status with the Company immediately prior to the date of the Change in Control;

b) without your express written consent, the relocation of the principal place of your employment or service to a location that is more than fifty (50) miles from your principal place of employment or service immediately prior to the date of the Change in Control, or the imposition of travel requirements substantially more demanding of you than such travel requirements existing immediately prior to the date of the Change in Control;

c) any failure by the Company to pay, or any material reduction by the Company of, (A) your base salary in effect immediately prior to the date of the Change in Control (unless reductions comparable in amount and duration are concurrently made for all other employees of the Company with responsibilities, organizational level and title comparable to yours), or (B) your bonus compensation, if any, in effect immediately prior to the date of the Change in Control (subject to applicable performance requirements with respect to the actual amount of bonus compensation earned by you);

d) any failure by the Company to (A) continue to provide you with the opportunity to participate, on terms no less favorable than those in effect for the benefit of any employee or service provider group which customarily includes a person holding the employment or service provider position or a comparable position with the Company then held by you, in any benefit or compensation plans and programs, including, but not limited to, the Company’s life, disability, health, dental, medical, savings, profit sharing, stock purchase and retirement plans, if any, in which you were participating immediately prior to the date of the Change in Control, or their equivalent, or (B) provide you with all other fringe benefits (or their

equivalent) from time to time in effect for the benefit of any employee group which customarily includes a person holding the employment or service provider position or a comparable position with the Company Group then held by you;

e) any breach by the Company of any material agreement between you and the Company concerning your employment; or

f) any failure by the Company to obtain the assumption of any material agreement between you and the Company concerning your employment by a successor or assign of the Company.

(iv) "**Layoff**" shall mean the involuntary termination of your service with the Company for reasons other than Cause, constructive termination, death, Disability, divestiture, termination upon transfer to a non-control Affiliate, or Termination After Change in Control.

(v) "**Termination After Change in Control**" shall mean either of the following events occurring within twenty-four (24) months after a Change in Control:

a) termination by the Company of your service with the Company for any reason other than for Cause; or

b) your resignation for Good Reason from all capacities in which you are then rendering service to the Company within a reasonable period of time following the event constituting Good Reason.

Notwithstanding any provision herein to the contrary, Termination After Change in Control shall not include any termination of your service with the Company which (1) is for Cause; (2) is a result of your death or Disability; (3) is a result of your voluntary termination of service other than for Good Reason; or (4) occurs prior to the effectiveness of a Change in Control.

**3. SECURITIES LAW COMPLIANCE .** Notwithstanding anything to the contrary contained herein, this Option may not be exercised unless the Stock issuable upon exercise of this Option is then registered under the Securities Act or, if such Stock is not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act.

**4. TERMINATION OF THE OPTION .** The term of this Option commences on the Date of Grant (as specified in the Grant Notice) and expires and shall no longer be exercisable upon the earliest of:

(a) the Expiration Date indicated in the Grant Notice;

(b) the tenth (10th) anniversary of the Date of Grant;

(c) the last day for exercising the Option following termination of your service as described in Section 2.5; or

(d) a Change of Control, to the extent provided in Section 5.

As an administrative matter, the vested portion of this Option may be exercised only until the close of the Nasdaq Global Select Market on the applicable date indicated in this Section 4 above or, if such date is not a trading day on the Nasdaq Global Select Market, the last trading day before such date. Any later attempt to exercise this Option will not be honored.

**5. CHANGE IN CONTROL .** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the “*Acquiring Corporation*”), may, without your consent, either assume the Company’s rights and obligations under this Option or substitute for this Option a substantially equivalent option for the Acquiring Corporation’s stock. In the event the Acquiring Corporation elects not to assume or substitute for this Options in connection with a Change in Control, the exercisability and vesting of this Option and any shares acquired upon the exercise thereof held by you, so long as your service has not terminated prior to such date, shall be accelerated, effective as of the date ten (10) days prior to the date of the Change in Control. The exercise or vesting of any Option and any shares acquired upon the exercise thereof that was permissible solely by reason of this Section shall be conditioned upon the consummation of the Change in Control. If this Option is neither assumed or substituted for by the Acquiring Corporation in connection with the Change in Control nor exercised as of the date of the Change in Control, it shall terminate and cease to be outstanding effective as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of this Option prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of this Option Agreement except as otherwise provided in this Option Agreement. Furthermore, notwithstanding the foregoing, if the corporation the stock of which is subject to this Option immediately prior to an Ownership Change Event constituting a Change in Control is the surviving or continuing corporation and immediately after such Ownership Change Event less than fifty percent (50%) of the total combined voting power of its voting stock is held by another corporation or by other corporations that are members of an affiliated group within the meaning of Section 1504(a) of the Code without regard to the provisions of Section 1504(b) of the Code, this Option shall not terminate unless the Committee otherwise provides in its discretion.

**6. TRANSFERABILITY.** An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Incentive Stock Option is granted only by such person. A vested Nonstatutory Stock Option shall not be transferable in any manner (including without limitation, sale, alienation, anticipation, pledge, encumbrance, or assignment) other than, (i) by will or by the laws of descent and distribution, (ii) by written designation of a beneficiary, in a form acceptable to the Company, with such designation taking effect upon your death, (iii) by delivering written notice to the Company, in a form acceptable to the Company (including such representations, warranties and indemnifications as the Company shall require you to make to protect the Company’s interests and ensure that this Nonstatutory Stock Option has been transferred under the circumstances approved by the Company), by gift to your spouse, former spouse, children, stepchildren, grandchildren, parent, stepparent, grandparent, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, persons having one of the foregoing types of relationship with you due to adoption, any person sharing your household (other than a tenant or employee), a foundation in which these persons or you control the management of assets, and any other entity in which these persons (or you) own more than fifty percent of the voting interests. A transfer to an entity in which



more than fifty percent of the voting interests are owned by these persons (or you) in exchange for an interest in that entity is specifically included as a permissible type of transfer. In addition, a transfer to a trust created solely for the benefit (i.e., you and/or any or all of the foregoing persons hold more than 50 percent of the beneficial interest in the trust) of you and/or any or all of the foregoing persons is also a permissible transferee, or (iv) such other transferees as may be authorized by the Company in its sole and absolute discretion. During your life this Nonstatutory Stock Option is exercisable only by you or a transferee satisfying the above conditions. Except in the event of your death, upon transfer of a Nonstatutory Stock Option to any or all of the foregoing persons, you, as the Optionee, are liable for any and all taxes due upon exercise of those transferred Nonstatutory Stock Options. At no time will a transferee who is considered an affiliate under Rule 144(a)(1) be able to sell any or all such Stock without complying with Rule 144. The right of a transferee to exercise the transferred portion of this Nonstatutory Stock Option shall terminate in accordance with your right of exercise under this Nonstatutory Stock Option and is further subject to such representations, warranties and indemnifications from the transferee that the Company requires the transferee to make to protect the Company's interests and ensure that this Nonstatutory Stock Option has been transferred under the circumstances approved by the Company. Once a portion of a Nonstatutory Stock Option is transferred, no further transfer may be made of that portion of the Nonstatutory Stock Option.

**7. OPTION NOT A SERVICE CONTRACT .** This Option is not an employment or service contract and nothing in this Agreement , the Grant Notice or the Plan shall be deemed to create in any way whatsoever any obligation on your part to continue in the service of the Company, or of the Company to continue your service with the Company. In addition, nothing in your Option shall obligate the Company, its stockholders, board, officers or employees to continue in the service of the Company.

**8. NOTICES .** Any notices provided for in this Stock Option Agreement, the Grant Notice or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**9. INTERPRETATION.** Any dispute or claim concerning any Options granted (or not granted) pursuant to the Grant Notice or this Agreement and any other disputes or claims relating to or arising out of the Plan shall be submitted to the Board or the Committee administering the Plan, which shall review such dispute in accordance with the Grant Notice, the Agreement and the Plan. The resolution of such a dispute by the Board or the Committee shall be final and binding on all parties.

**10. AMENDMENT.** The Board may amend your Option at any time, provided no such amendment may adversely affect the Option or any unexercised portion of your Option, without your consent unless such amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Agreement shall be effective unless in writing or, in such electronic form as may be designated by the Company.

**11. DESCRIPTION OF ELECTRONIC DELIVERY .** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Stock Option Agreement, and any reports of the Company provided generally to the Company's

shareholders, may be delivered to you electronically. In addition, if permitted by the Company, you may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via electronic mail (“e-mail”) or such other means of electronic delivery specified by the Company.