

IPG PHOTONICS CORP  
Form 8-K  
October 15, 2013

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

FORM 8-K  
CURRENT REPORT

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

October 7, 2013  
Date of Report (Date of earliest event reported)

IPG PHOTONICS CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware (State or Other Jurisdiction of Incorporation)	001-33155 (Commission File No.)	04-3444218 (IRS Employer Identification No.)
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50 Old Webster Road  
Oxford, Massachusetts 01540  
(Address of Principal Executive Offices, including Zip Code)

Registrant's telephone number, including area code: (508) 373-1100

Not Applicable  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))



Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On October 7, 2013, the Compensation Committee of the Board of Directors of IPG Photonics Corporation (the “Registrant” or the “Company”) approved new employment agreements with the Chief Executive Officer, Dr. Valentin P. Gapontsev, and the other Named Executive Officers of the Registrant as of December 31, 2012. The other Named Executive Officers are Dr. Eugene Scherbakov, Timothy P.V. Mammen, Angelo P. Lopresti and Dr. Alexander Ovtchinnikov. Each of the Named Executive Officers has signed the new agreements with the Registrant, which supersede the agreements which were to expire on December 31, 2013. In addition to extending the expiration dates of the agreements, the Compensation Committee approved several severance provisions based upon its review of the severance benefits that the Company’s peers provide.

The new employment agreements do not change the annual base salaries currently in effect for the Named Executive Officers. The new employment agreements expire on December 31, 2015, except for the employment agreement with Dr. Valentin Gapontsev, the Registrant’s Chief Executive Officer, which expires on December 31, 2016. Upon their future expirations, the new employment agreements renew for terms of one year, unless the Registrant or a Named Executive Officer provides written notice of its or his intention to not renew the agreement not less than six months before the then expiration date.

The agreements entitle the Named Executive Officers to participate in bonus plans, standard insurance plans such as life, short-term disability and long-term disability insurance and retirement benefits, such as the 401(k) plan and equity award plans described above, on similar terms and on a similar basis as such benefits are available to executives at similar levels within the Company.

If the Company terminates the employment of any of the Named Executive Officers without cause (as defined in the respective employment agreements) or any of the Named Executive Officers terminates his employment for good reason (as defined in the respective employment agreements) (“cause” and “good reason” are referred below as “Involuntary Terminations”), then the officer would receive:

- (a) continuation of salary for eighteen months, except in the case of Dr. Gapontsev, who would receive continuation of salary for thirty-six months;
- (b) a portion of the annual bonus that the executive would have received had he remained employed through the end of the applicable bonus period, including the individual performance element (the portion based upon the percentage of the year that he was employed by the Company);
- (c) continuation of health benefits for eighteen months, except in the case of Dr. Gapontsev, who would receive continuation of medical and dental benefits for thirty-six-months; and
- (d) accelerated vesting of equity compensation awards granted after the date of the agreement that otherwise would have vested within twelve months of termination of employment.

Upon an Involuntary Termination within twenty-four months following a change in control of the Company, the Named Executive Officer would be entitled to continuation of salary and health benefits for twenty-four months, plus a payment of two times the average annual bonus paid to the Named Executive Officer for the three years preceding the termination. In the case of the Chief Executive Officer, he would be entitled to continuation of salary and health benefits for thirty-six months, plus a payment of three times the average annual bonus paid to him for the three years preceding the termination. Other severance benefits following a change in control, including full vesting of outstanding equity awards, do not change. Upon a change in control, the officers’ employment periods under the agreements would automatically be extended to the second anniversary of the change in control if such date is later than expiration of the then current term.



If the employment period of any of the Named Executive Officers terminates and the Company does not offer such officer continued employment in the same or a substantially similar position or in a higher position than the officer's position at the end of the employment period, and at a compensation level that is the same or substantially similar to the compensation level in effect at the end of the employment period, then such officer would receive continuation of salary and health benefits for twelve months, except for the Chief Executive Officer who would receive the same for twenty-four months, plus a portion of the annual bonus that the executive would have received had he remained employed through the end of the applicable bonus period, including the individual performance element (the portion based upon the percentage of the year that he was employed by the Company).

A Named Executive Officer would also receive the payments described in clause (b) above if his employment is terminated by death or disability. Under the new employment agreements, the Company would not be obligated to make any cash payments if employment is terminated by the Company for cause or by the executive not for good reason.

Severance payments to the officers would be conditioned upon the release of claims by the Named Executive Officer in favor of the Company. Also under the new agreements, certain payments under the agreements may be subject to a compensation recovery policy when established by the Company.

Each of these executive officers also entered into a new non-competition agreement with the Company that prohibits each of them from competing with the Company for a period of one year after the termination of his employment with the Company for any reason and from hiring or attempting to hire the Company's employees or soliciting customers or suppliers of the Company for a period ending eighteen months following the termination of his employment for any reason. Each of the Named Executive Officers is entitled to receive his base salary for the period during which the Company enforces the non-competition provisions of the agreement but not for more than one year following the termination of his employment.

The foregoing description of the employment agreements does not purport to be complete and is qualified in its entirety by reference to the employment agreements, service agreement and the form of confidentiality, non-competition and confirmatory assignment agreement between the Company and the Named Executive Officers, copies of which are attached as exhibits to this Current Report on Form 8-K and are incorporated herein by reference.

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Item 8.01 Other Events.

Certain directors and officers of IPG Photonics Corporation (the “Company”) adopt from time to time pre-arranged trading plans (each, a “Plan”) designed to comply with Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, and the Company’s policies regarding stock transactions. Under Rule 10b5-1, directors, officers and other persons who are not in possession of material non-public information may adopt a plan or contract for pre-arranged sales of Company securities under specified conditions and at specified times. Using these Plans, insiders can gradually diversify their investment portfolios, spread stock trades out over an extended period of time to reduce market impact and avoid concerns about transactions occurring at a time when they might possess inside information.

The Plan adopted by Eugene Scherbakov, Managing Director - IPG Laser GmbH, and Senior Vice President, Europe and a director of the Company, provides for the sale of up to a total of 5,270 shares over a period ending September 2014, unless terminated sooner in certain circumstances. Of these shares, 5,270 shares will be acquired through the exercise of stock options. Shares will be sold under the Plan on the open market at prevailing market prices, subject to minimum price thresholds.

The Plan adopted by George BuAbbud, the Company’s Vice President, Telecommunications, provides for the sale of up to a total of 56,651 shares, including shares acquired upon exercise of stock options, over a period ending October 2014, unless terminated sooner in certain circumstances. Of these shares, 56,651 shares will be acquired through the exercise of stock options. Shares will be sold under the Plan on the open market at prevailing market prices, subject to minimum price thresholds.

The Plan adopted by Thomas Burgomaster, the Company’s Vice President, Corporate Controller, provides for the sale of up to a total of 10,472 shares, including shares acquired upon exercise of stock options, over a period ending September 2014, unless terminated sooner in certain circumstances. Of these shares, 10,472 shares will be acquired through the exercise of stock options. Shares will be sold under the Plan on the open market at prevailing market prices, subject to minimum price thresholds.

The Company does not undertake to report Plans that may be adopted by any directors or officers of the Company in the future, or to report any modification or termination of any Plan, except to the extent required by law.

Item 9.01 Financial Statements and Exhibits.

Exhibit  
Number

- 10.1 Employment Agreement dated October 7, 2013, between the Registrant and Dr. Valentin P. Gapontsev.
  - 10.2 Service Agreement dated October 7, 2013, between IPG Laser GmbH and Dr. Eugene Scherbakov.
  - 10.3 Form of Employment Agreement dated October 7, 2013, between the Registrant and each of Timothy P.V. Mammen, Angelo P. Lopresti and Alexander Ovtchinnikov.
  - 10.4 Form of Confidentiality, Non-Competition and Confirmatory Assignment Agreement between the Registrant and each of the named executive officers and certain other executives. officers.
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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned thereunto duly authorized.

October 15, 2013

IPG PHOTONICS CORPORATION

/s/ Angelo P. Lopresti

Angelo P. Lopresti

Senior Vice President, General Counsel &  
Secretary

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Exhibit Index

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Exhibit 10.1

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”), executed on this 7th day of October, 2013 (the “Effective Date”), by and between IPG Photonics Corporation, a Delaware corporation having an office at 50 Old Webster Road, Oxford, MA 01540 (the “Corporation”), and Valentin P. Gapontsev (“Executive”). The Corporation and Executive are referred to jointly below as the “Parties.”

WHEREAS, the Corporation and Executive previously entered into an employment agreement dated March 1, 2006, which the Corporation and Executive have amended from time to time (the “Prior Agreement”);

WHEREAS, the Corporation and Executive desire to amend and restate the Prior Agreement; and

WHEREAS, the Corporation desires to continue to employ Executive and Executive desires to continue his employment with the Corporation on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the employment of Executive, the mutual terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Employment. Executive will be employed by the Corporation in the position of Chief Executive Officer. Executive will report to the Corporation’s Board of Directors (the “Board”). Executive’s primary responsibility will be executive management of the business and affairs of the Corporation and its Affiliates (as defined below). Executive will carry out such duties as shall be assigned from time to time by the Board, subject to applicable laws, and ethical duties. During the Term (as defined below), Executive shall devote Executive’s reasonable best efforts, energies and abilities and Executive’s full business time, skill and attention to the business and affairs of the Corporation and its Affiliates (as defined below), and shall act at all times according to the highest professional standards, for the purpose of advancing the business of the Corporation and its Affiliates (as defined below). For purposes of this Agreement, an “Affiliate” shall mean a corporation that, for purposes of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”), is a Parent or Subsidiary of the Corporation within the meaning of Code Sections 424(e) and 424(f).

2. Term. This Agreement shall commence on the Effective Date and shall expire on 5:00 pm E.S.T. on December 31, 2016 (the “Initial Term”), unless terminated earlier pursuant to the provisions of Sections 6, 7, 8, or 10 hereof. The term of employment shall be renewed automatically for successive periods of one (1) year each (a “Renewal Term”) after the expiration of the Initial Term, unless the Corporation provides Executive, or Executive provides the Corporation, with written notice to the contrary at least one hundred eighty (180) calendar days prior to the end of the Initial Term or any Renewal Term. The Initial Term and any Renewal Terms are collectively referred to herein as the “Term.” If either the Corporation or Executive elect not to renew the Term of this Agreement in accordance with this Section 2 and Executive thereafter continues in employment with Corporation or its Affiliates, Executive shall be employed on an at-will basis and the terms of such employment and any subsequent termination of employment shall be subject solely to the Corporation’s general employment practices and policies. In the event of a “Change in Control” of the Corporation (as such term is defined in the IPG Photonics Corporation 2006 Incentive Compensation Plan, as amended or any successor thereto (the “Equity Plan”)) during the Term, the Term automatically will be extended until the later of (i) the second anniversary of the Change in Control, or (ii) the scheduled expiration of the then-current Term.

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### 3.Compensation.

(i)Salary. The Corporation shall pay to Executive an annual base salary (“Base Salary”) of Five Hundred and Forty-Two Thousand, Eight Hundred dollars (U.S. \$542,800) effective as of the Effective Date. The Corporation will pay Executive’s Base Salary in equal installments in accordance with the Corporation’s standard payroll policies and schedule, subject to tax and elective withholding and deductions. Thereafter, the Board, or such committee of the Board as is responsible for setting the compensation of senior executive officers, shall review Executive’s performance and Base Salary annually in January of each year, in light of competitive data, the Corporation’s performance, and Executive’s performance, and determine whether to increase Executive’s Base Salary on a prospective basis. The first review shall be in January 2014. Such adjusted annual salary then shall become Executive’s “Base Salary” for purposes of this Agreement.

(ii)Annual Bonus. Executive will be eligible for an annual cash bonus (the “Bonus”), based on performance, and calculated as a percentage of Executive’s Base Salary. The Bonus will be paid at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus, and is intended to qualify for the short-term deferral exception to Code Section 409A.

(iii)Equity Compensation. Executive will be eligible to participate in any long-term incentive plans, and/or equity-based compensation plans established or maintained by the Corporation for its senior executive officers or employees, including, but not limited to, the Equity Plan.

### 4.Benefits.

(i)Executive shall be entitled to the extent eligible to participate in any benefit plans as may be adopted and modified by the Corporation from time to time, including without limitation health, dental and medical plans, life and disability insurance, paid vacation, holiday, and retirement plans. The benefits available to Executive shall be no less favorable than those available to other executives at similar levels within the organization or to the employees of the Corporation at the location where Executive works. Benefits provided under this Agreement shall be subject to the terms and conditions of any applicable benefit plan, including any eligibility and vesting requirements, as such plans may be in effect from time to time.

(ii)Executive shall be entitled to five weeks of paid vacation each year. The maximum number of accrued vacation hours that Executive can have at any point in time is equal to the total vacation hours earned in the last twelve months, plus one week of vacation carried over from the prior twelve months of service.

5.Other Activities. The employment of Executive shall be on a full-time basis, but Executive may be an investor or otherwise have an interest in or serve on the board of directors or advisory board to other businesses, partnerships and entities so long as the other activities of Executive do not materially interfere with the performance of Executive’s duties to the Corporation, so long as such other activities do not cause Executive to violate the Restrictive Covenants defined and incorporated herein in Section 12 of this Agreement and Executive discloses all such activities to the Board. Nothing in this provision or this Agreement limits or restricts Executive’s duties and obligations, including the duty of loyalty, that arise under the law.

6. Termination by the Corporation. The Corporation may terminate Executive's employment during the Term:

(i) without Cause (as defined below) by giving Executive sixty (60) calendar days' prior written notice, or

(ii) for Cause (as defined below) by delivering to Executive a copy of a resolution duly adopted by the affirmative vote of a majority of the independent directors of the Board then in office at a meeting of the Board called and held for such purpose, finding that Executive has committed an act set forth below in this Section 6. Nothing herein shall limit Executive's right or Executive's beneficiaries' right to contest the validity or propriety of any such determination. For purposes of this Agreement, "Cause" shall mean: (A) an act of fraud, embezzlement or theft by Executive in connection with Executive's duties or in the course of Executive's employment with the Corporation or an Affiliate; (B) Executive's intentional wrongful damage to the property of the Corporation or its Affiliates; (C) Executive's intentional breach of Section 12 hereof while Executive remains in the employ of the Corporation or an Affiliate; (D) an act of Gross Misconduct (as defined below); or (E) a conviction for a misdemeanor involving moral turpitude or a charge of a felony; and, in each case, the reasonable, good faith determination by the Board as hereafter provided that any such act or omission shall have been materially harmful to the Corporation or an Affiliate. For purposes of this Agreement, "Gross Misconduct" shall mean a willful or grossly negligent act or omission that has or will have a material and adverse impact on the business or reputation of the Corporation or its Affiliates, or on the business of the customers or suppliers of the Corporation or its Affiliates as such relate to the Corporation. In addition, Executive's employment shall be deemed to have terminated for Cause if, based on facts and circumstances discovered after Executive's employment has terminated, the Board determines in reasonable good faith, within one year after Executive's employment terminated, and after appropriate investigation and an opportunity for Executive to be interviewed (with or without counsel as Executive may determine) by a subcommittee of the independent Board members or its representative, that Executive committed an act during the Term that would have justified a termination for Cause.

7. Termination by Executive. Executive may terminate his employment during the Term by giving the Corporation sixty (60) calendar days' prior written notice; provided that, if Executive purports to terminate his employment during the Term for Good Reason (as defined below), Executive must give the Corporation written notice of his intent to terminate for Good Reason within sixty (60) calendar days of the occurrence of the event that allegedly constitutes Good Reason. The Corporation shall have a right to cure the event alleged to constitute Good Reason for a period of thirty (30) calendar days after notice from Executive of his intention to terminate for Good Reason. In the event of termination by notice under the first sentence of this Section 7, the Corporation in its discretion may elect a termination date that is earlier than the conclusion of the sixty (60) calendar day notice period, but the termination shall still be deemed a voluntary termination by Executive with Good Reason under this Section. "Good Reason" means the occurrence of any of the following events without Executive's express written consent:

(i) The material reduction of Executive's authorities, duties, or responsibilities with the Corporation;

(ii) A material reduction by the Corporation of Executive's Base Salary, other than a reduction approved by the Board that similarly applies to all executive officers of the Corporation, provided that such a reduction in Base Salary shall not exceed more than twenty percent (20%) of

the then Base Salary;

(iii) A relocation of the offices of Executive to a place greater than fifty (50) miles in distance from the current executive offices of the Corporation in Oxford, MA; or

(iv) Any action or inaction that constitutes a material breach by the Corporation of this Agreement.

The Corporation shall have no obligations to Executive after Executive's last day of employment following termination of employment under this Section, except as specifically set forth in this Agreement or under any applicable plans, programs or arrangements of the Corporation including, without limitation, the Corporation's Certificate of Incorporation or By-Laws, as either may be amended from time to time, the Equity Plan and any agreements thereunder, and the indemnification agreement described in Section 14.

8. Automatic Termination. Notwithstanding the provisions of Section 2, Executive's employment shall automatically terminate upon Executive's death or Disability (as defined below). Executive shall be deemed to have a "Disability" for purposes of this Agreement if Executive is unable to perform substantially, by reason of physical or mental incapacity, Executive's duties or obligations under this Agreement, with or without reasonable accommodation as defined in the Americans with Disabilities Act and implementing regulations, for a period of one hundred and eighty (180) consecutive calendar days in any 360-calendar day period. The Board shall determine, in the good faith exercise of its reasonable discretion, according to the facts then available, whether and when the Disability of Executive has occurred.

9. Term of Agreement. Any termination of Executive's employment shall also end the Term. For purposes of this Agreement, Executive's employment with the Corporation and its Affiliates shall be deemed to be terminated when Executive has a "separation from service" within the meaning of Code Section 409A, and references in this Agreement to termination of employment shall be deemed to refer to such a separation from service. Upon Executive's separation from service for any reason, Executive shall be deemed to have resigned as of the date of Executive's separation from service from all offices, directorships and fiduciary positions with the Corporation, its Affiliates, and employee benefit plans of the Corporation unless Executive is affirmatively re-appointed or re-elected to such position as of the date of Executive's separation from service.

10. Certain Obligations of the Corporation Following Termination of Executive's Employment. Following termination of Executive's employment during the Term under the circumstances described below, the Corporation will pay to Executive the following compensation and provide the following benefits in addition to any benefits to which Executive may be entitled by law in full satisfaction and final settlement of any and all claims and demands that Executive or the Corporation may have against the other under this Agreement:

(i) Termination of Employment for Any Reason. In the event of Executive's termination of employment for any reason, the Corporation shall pay or provide Executive (a) any unpaid Base Salary through the date of termination and (b) any benefits (including, without limitation, any unused vacation accrued in accordance with Section 4(ii)) accrued, earned or vested, and any unreimbursed expenses incurred, up to and including the effective date of such termination to which Executive may be entitled under the terms of any applicable arrangement, plan or program (collectively, the "Accrued Amounts").

(ii) Termination Without Cause by the Corporation or for Good Reason by Executive. If, during the Term, the Corporation terminates Executive's employment without Cause under Section 6(i) hereof or Executive terminates his employment for Good Reason under Section 7 hereof, Executive shall be entitled to the following payments and benefits, subject to Section 13:

(a) The Accrued Amounts, as soon as reasonably practicable following the date of termination;

(b) Any Bonus that has been actually earned as of or prior to the termination date, but has not been paid, payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus;

(c) A pro rata portion of the amount of Bonus, if any, Executive would have received pursuant to Section 3(ii) for the year in which Executive's employment terminated. The Corporation shall determine what annual Bonus, if any, Executive would have earned had he been employed through the end of the applicable period (the "Base Incentive Amount"), in accordance with the methods used to calculate the annual Bonus for the Corporation's other similarly-situated executives; provided that, with respect to the personal performance evaluation element of the annual Bonus calculation, if all financial metric components meet or exceed Target II, Executive shall be deemed awarded one hundred percent (100%) of the potential personal performance evaluation bonus; if no financial metric bonus is awarded, no personal performance evaluation bonus will be deemed awarded, and amounts in between will be determined by linear interpolation between Target I and Target II. The pro rata portion to be paid pursuant to this paragraph shall be determined by multiplying the Base Incentive Amount by a fraction, the numerator of which is the number of calendar days from the beginning of the applicable annual period in which the termination occurred through the date of termination and the denominator of which is 365. Any payment due under this paragraph shall be paid at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive would have become vested in such Bonus;

(d) Continuing payments of Base Salary, payable in accordance with regular payroll practices of the Corporation, for thirty-six (36) months following the date of termination; and

(e) Cash reimbursement of Executive's COBRA premiums (or an amount equal to Executive's COBRA premiums) (sufficient to cover full family health care) for a period of thirty-six (36) months following the termination of Executive's employment if Executive elects such COBRA coverage; provided, however, that any payments or reimbursements for such COBRA premiums that are subject to Code Section 409A will be made in accordance with Treasury Regulation § 1.409A-3(i)(1)(iv) (or any similar or successor provisions). The foregoing notwithstanding, the Corporation's obligation to reimburse described in the preceding sentence shall cease on the date Executive becomes eligible for coverage under another group health plan offered by a new employer of Executive or covered under a group health plan of the employer of Executive's spouse, in either case, which does not impose pre-existing condition limitations on Executive's coverage. Nothing herein shall be construed to extend the period of time over which COBRA continuation coverage shall be provided to Executive or his dependents beyond that mandated by law.

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If, during the Term, the Corporation terminates Executive's employment without Cause under Section 6(i) hereof or Executive terminates his employment for Good Reason under Section 7 hereof, for purposes of determining the vested portions of Executive's stock options and any other equity compensation awards then outstanding, Executive shall be deemed to have terminated employment twelve (12) months following the date of Executive's actual termination of employment.

(iii) Termination by Executive Without Good Reason or by the Corporation for Cause. If, during the Term, Executive terminates employment under Section 7(i) hereof without Good Reason or the Corporation terminates Executive's employment under Section 6(ii) hereof for Cause, Executive shall be entitled to no further compensation or other benefits under this Agreement except for the Accrued Amounts, payable in a single lump sum as soon as practicable following the date of termination.

(iv) Death; Disability. If Executive's employment is terminated during the Term by reason of Executive's death or for Disability, Executive or Executive's estate, as the case may be, shall be entitled to the following payments:

(a) The Accrued Amounts, as soon as reasonably practicable following the date of termination;

(b) Any Bonus that has been actually earned as of or prior to the termination date, but has not been paid, payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus; and

(c) The amount payable, if any, as determined pursuant to Section 10(ii)(c), payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus.

If Executive's employment is terminated during the Term by reason of Executive's death or for Disability, the treatment of any equity compensation awards held by Executive shall be governed by the terms of the plan or agreement under which such awards were granted.

(v) Termination on or After a Change in Control. If, within twenty-four (24) months following a Change in Control (as defined in the Equity Plan), the Corporation terminates Executive's employment without Cause under Section 6(i) hereof or Executive terminates his employment for Good Reason under Section 7 hereof, Executive shall be entitled to the following payments, subject to Section 13:

(a) The Accrued Amounts, as soon as reasonably practicable following the date of termination;

(b) Any Bonus that has been actually earned as of or prior to the termination date, but has not been paid, payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus;

(c) The amount payable, if any, as determined pursuant to Section 10(ii)(c),

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payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive would have become vested in such Bonus;

(d) Continuing payments of Base Salary, payable in accordance with regular payroll practices of the Corporation, for thirty-six (36) months following the date of termination;

(e) Cash reimbursement of Executive's COBRA premiums (or an amount equal to Executive's COBRA premiums) (sufficient to cover full family health care) for a period of thirty-six (36) months following the termination of Executive's employment if Executive elects such COBRA coverage; provided, however, that any payments or reimbursements for such COBRA premiums that are subject to Code Section 409A will be made in accordance with Treasury Regulation § 1.409A-3(i)(1)(iv) (or any similar or successor provisions). The foregoing notwithstanding, the Corporation's obligation to reimburse described in the preceding sentence shall cease on the date Executive becomes eligible for coverage under another group health plan offered by a new employer of Executive or covered under a group health plan of the employer of Executive's spouse, in either case, which does not impose pre-existing condition limitations on Executive's coverage. Nothing herein shall be construed to extend the period of time over which COBRA continuation coverage shall be provided to Executive or his dependents beyond that mandated by law;

(f) A lump sum cash amount equal to three (3) times Executive's average annual Bonus over the three (3) completed years immediately preceding the date of the Change in Control, payable as soon as reasonably practicable after the date of termination; and

(g) All equity (including options, RSUs and other stock) awards outstanding as of the Change in Control and held by Executive on the date of termination shall immediately vest and become non-forfeitable.

(h) If a Change in Control occurs and payments are made under this Section 10(v), and a final determination is made by legislation, regulation, or ruling directed to Executive or the Corporation, by court decision, or by independent tax counsel, that the aggregate amount of any payments made to Executive under this Agreement and any other agreement, plan, program or policy of the Corporation in connection with, on account of, or as a result of, such Change in Control ("Total Payments") will be subject to an excise tax under the provisions of Code Section 4999, or any successor section thereof ("Excise Tax"), the Total Payments shall be reduced (beginning with those that are exempt from Code Section 409A) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount that would cause the Total Payments to be subject to the Excise Tax; provided, however, that the Total Payments shall only be reduced to the extent that the after-tax value of amounts received by Executive after application of the above reduction would exceed the after-tax value of the Total Payments received without application of such reduction. For this purpose, the after-tax value of an amount shall be determined taking into account all federal, state, and local income, employment, and excise taxes applicable to such amount. In making any determination as to whether the Total Payments would be subject to an Excise Tax, consideration shall be given to whether any portion of the Total Payments could reasonably be considered, based on the relevant facts and circumstances, to be reasonable compensation for services rendered (whether before or after the consummation of the applicable Change in

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Control). To the extent Total Payments must be reduced pursuant to this Section, the Corporation, without consulting Executive, will reduce the Total Payments to achieve the best economic benefit, and to the extent economically equivalent, on a pro-rata basis.

(1) In the event that upon any audit by the Internal Revenue Service, or by a state or local taxing authority, of the Total Payments, a change is determined to be required in the amount of taxes paid by, or Total Payments made to, Executive, appropriate adjustments will be made under this Agreement such that the net amount that is payable to Executive after taking into account the provisions of Code Section 4999 will reflect the intent of the parties as expressed in this Section 10(v)(h). Executive shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require payment of an Excise Tax or an additional Excise Tax on the Total Payments (a "Claim"). Such notification shall be given as soon as practicable but no later than ten (10) business days after Executive is informed in writing of such Claim and shall apprise the Corporation of the nature of such Claim and the date on which such Claim is requested to be paid. Executive shall not pay such Claim prior to the expiration of the thirty (30) calendar day period following the date on which Executive gives such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such Claim is due). If the Corporation notifies Executive in writing prior to the expiration of such period that it desires to contest such Claim, Executive shall: (A) give the Corporation any information reasonably requested by the Corporation relating to such Claim, (B) take such action in connection with contesting such Claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such Claim by an attorney reasonably selected by the Corporation, (C) cooperate with the Corporation in good faith in order to contest effectively such Claim, and (D) permit the Corporation to participate in any proceedings relating to such Claim; provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless for any Excise Tax, additional Excise Tax, or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this subparagraph (h)(1), the Corporation, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such Claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the Claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one (1) or more appellate courts, as the Corporation shall determine, provided, however, that if the Corporation directs Executive to pay such Claim and sue for a refund, the Corporation shall advance the amount of such payment to Executive on an interest-free basis or, if such an advance is not permissible thereunder, pay the amount of such payment to Executive as additional compensation, and shall indemnify and hold Executive harmless from any Excise Tax, additional Excise Tax, or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or additional compensation; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. The Corporation shall

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reimburse any fees and expenses provided for under this Section 10(v)(h) on or before the last day of Executive's taxable year following the taxable year in which the fee or expense was incurred, and in accordance with the other requirements of Code Section 409A and Treasury Regulation §1.409A-3(i)(1)(v) (or any similar or successor provisions).

(2) If, after the receipt by Executive of an amount advanced or paid by the Corporation pursuant to paragraph (h)(1) above, Executive becomes entitled to receive any refund with respect to such Claim, Executive shall (subject to the Corporation's complying with the requirements of subparagraph (h)(1)) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by Executive of an amount advanced by the Corporation pursuant to paragraph (h)(1), a determination is made that Executive shall not be entitled to any refund with respect to such Claim and the Corporation does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of sixty (60) calendar days after such determination, then such advance shall be forgiven and shall not be required to be repaid.

(vi) Expiration. If the Term of this Agreement expires due to either the Corporation or Executive electing not to renew the Term in accordance with Section 2, and the Corporation does not offer Executive continued employment in the same or a substantially similar position as, or in a higher position than, his position on the date of the expiration of the Term, and at a compensation level that is the same or substantially similar to that in effect on the date of the expiration of the Term, Executive shall be entitled to resign from employment with the Corporation and receive the following payments:

(a) The Accrued Amounts, as soon as reasonably practicable following the date of termination;

(b) Any Bonus that has been actually earned as of or prior to the termination date, but has not been paid, payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive becomes vested in such Bonus;

(c) The amount payable, if any, as determined pursuant to Section 10(ii)(c), payable at the time payment is made to other similarly-situated executives of the Corporation, but in no event later than two and a half (2½) months after the close of the calendar year in which Executive would have become vested in such Bonus;

(d) Continuing payments of Base Salary, payable in accordance with regular payroll practices of the Corporation, for twenty-four (24) months following the date of termination; and

(e) Cash reimbursement of Executive's COBRA premiums (or an amount equal to Executive's COBRA premiums) (sufficient to cover full family health care) for a period of twenty-four (24) months following the termination of Executive's employment if Executive elects such COBRA coverage; provided, however, that any payments or reimbursements for such COBRA premiums that are subject to Code Section 409A will be made in accordance with Treasury Regulation § 1.409A-3(i)(1)(iv) (or any similar or successor provisions). The foregoing notwithstanding, the Corporation's obligation to reimburse described in the preceding sentence shall cease on the date Executive becomes eligible for coverage under

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another group health plan offered by a new employer of Executive or covered under a group health plan of the employer of Executive's spouse, in either case, which does not impose pre-existing condition limitations on Executive's coverage. Nothing herein shall be construed to extend the period of time over which COBRA continuation coverage shall be provided to Executive or his dependents beyond that mandated by law.

Except as provided in Section 10(i), Executive shall not be entitled to payment of the amounts described in this subsection (vi) if the Corporation offers Executive continued employment in the same or a substantially similar position as, or in a higher position than, his position on the date of expiration of the Term, and at a compensation level that is the same or a substantially similar to that in effect on the date of the expiration of the Term, and Executive declines the offer.

(vii)No Mitigation or Offset. In the event of any termination of Executive's employment under this Section 10, Executive shall be under no obligation to seek other employment or otherwise mitigate his damages, and there shall be no offset against amounts due to Executive under this Agreement on account of any remuneration or benefit attributable to any subsequent employment obtained by Executive, except as provided in Sections 10(ii)(e), 10(v)(e) and 10(vi)(e).

(viii)Compensation Recovery Policy. Notwithstanding any provision in this Agreement to the contrary, payments under this Agreement will be subject to any Compensation Recovery Policy established by the Corporation and amended from time to time.

11.Nature of Payments. Upon termination of employment pursuant to Sections 6, 7, 8 or 9, Executive will be released from any duties and obligations to the Corporation set forth in this Agreement (except the duties and obligations under the Restrictive Covenants and as set forth in Section 12 hereof and the obligation under Sections 13 and 23) and the obligations of the Corporation to Executive under this Agreement will be as set forth in Section 10.

12.Restrictive Covenants. Executive has executed and delivered a Confidentiality, Non-Competition and Confirmatory Assignment Agreement prior to or contemporaneous with the date of this Agreement (together with any similar or successor agreements, referred to herein as the "Restrictive Covenants"), and Executive agrees that, as part of this Agreement, Executive shall comply with the terms of the Restrictive Covenants. Notwithstanding Section 10(iii) of this Agreement, if (a) Executive terminates employment other than for Good Reason and, thus, is not entitled to the payments and benefits under Section 10(ii) of this Agreement, and (b) (i) Executive receives a written offer of employment during the Non-Competition Period set forth in Section 2(a) of the Restrictive Covenant, or (ii) Executive is not able to find suitable employment in his field in relation to his skills, position and base salary, which employment would not contravene Section 2(a) of the Restrictive Covenant, after a good faith effort by Executive to search for such employment, and (iii) the Company notifies Executive that it intends to enforce the non-compete provisions of such Section 2(a) against Executive, then the Company shall pay to Executive an amount equal to the semi-monthly amount of Executive's Base Salary for each semi-monthly payroll period beginning (A) on the effective date of the written offer of employment referred to above or (B) during the period in which Executive is not able to find suitable employment, and ending on the earliest to occur of (I) the end of the Non-Competition Period set forth in such Section 2(a), or (II) the date as of which Executive begins new employment with an employer, which employment would not contravene Section 2(a) of the Restrictive Covenant. For the avoidance of doubt, the non-competition and other provisions of the Restrictive Covenants in all events shall continue to apply until the end of the Non-Competition Period set forth in Section 2(a) of the Restrictive Covenant, regardless of Executive's new employment with an employer that would not contravene Section 2(a) of the Restrictive Covenant, the subsequent termination of such employment or any

other event.

13. Release. Any and all amounts payable and benefits or additional rights provided pursuant to this Agreement beyond Accrued Amounts shall only be payable if Executive delivers to the Corporation an original, signed release of claims of Executive occurring up to the release date, in a form substantially the same as attached hereto as Exhibit A (the "Release"). The Corporation shall deliver the Release to Executive within ten (10) calendar days of the date Executive's employment terminates and Executive must deliver to the Corporation and not revoke an executed and enforceable Release no later than sixty (60) calendar days after the date Executive's employment terminates (the "Release Deadline"). Payment of the amounts described in Section 10 shall commence no earlier than the date on which Executive delivers to the Corporation and does not revoke an executed and enforceable release as described herein. Payment of any severance or benefits that are not exempt from Code Section 409A shall be delayed until the Release Deadline, irrespective of when Executive executes the Release; provided, however, that where Executive's termination of employment and the Release Deadline occur within the same calendar year, the payment may be made up to thirty (30) calendar days prior to the Release Deadline, and provided further that where Executive's termination of employment and the Release Deadline occur in two separate calendar years, payment may not be made before the later of January 1 of the second year or the date that is thirty (30) calendar days prior to the Release Deadline. As part of the Release, Executive shall affirm that Executive (i) has advised the Corporation in writing, of any facts that Executive is aware of that constitute or might constitute a violation of any ethical, legal or contractual standards or obligations of the Corporation or any Affiliate, and (ii) is not aware of any existing or threatened claims, charges, or lawsuits that Executive has not disclosed to the Corporation.

14. Indemnification. The Corporation shall maintain a directors' and officers' liability insurance policy covering Executive on the same basis as in effect for other senior executive employees, and shall provide indemnity to Executive by a separate, written indemnification agreement.

15. Notices. Any and all notices, requests, demands, and other communications provided for herein shall be sufficient if in writing and shall be deemed to have been duly given if delivered by hand or if sent by registered or certified mail, return receipt requested. Notice shall be deemed to have been given when notice is received by the party on whom the notice was served. Notice to the Corporation shall be addressed to the Corporation at its principal office, with attention to the General Counsel, and notice to Executive shall be addressed to Executive at Executive's last address as shown on the records of the Corporation.

16. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the substantive laws of the Commonwealth of Massachusetts, without regard to its internal conflicts of law provisions.

17. Severability. In the event that any provision of this Agreement shall be determined to be invalid, illegal or otherwise unenforceable or contrary to law or public policy, the enforceability of the other provisions in this Agreement shall not be affected thereby.

18. Assignment; Successors. Executive recognizes that this is an agreement for personal services and that Executive may not assign this Agreement. The Agreement shall inure to the benefit of and be binding upon the Corporation's successors and assigns.

19. Entire Agreement/Amendment. This Agreement and the Confidentiality, Non-Competition and Confirmatory Assignment Agreement referred to in Section 12 constitute the entire agreement between