

DUSA PHARMACEUTICALS INC

Form DEF 14A

April 21, 2006

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
SCHEDULE 14A
(Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant b

Filed by a Party other than the Registrant o

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

DUSA Pharmaceuticals, Inc.

(Name of Registrant as Specified in its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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- (1) Amount Previously Paid: _____
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DUSA PHARMACEUTICALS, INC.

**25 Upton Drive
Wilmington, Massachusetts 01887**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD JUNE 15, 2006**

TO THE SHAREHOLDERS OF

DUSA PHARMACEUTICALS, INC.

YOU ARE HEREBY NOTIFIED that the Annual Meeting of Shareholders of DUSA Pharmaceuticals, Inc. will be held on Thursday, June 15, 2006, at 11:00 a.m. at the Company's offices located at 25 Upton Drive, Wilmington, Massachusetts to consider and act upon the following matters:

- (1) Election of eight (8) directors;
- (2) Adoption of the Company's 2006 Equity Compensation Plan;
- (3) Ratification of Deloitte & Touche LLP as the Company's independent registered public accounting firm for the fiscal year 2006; and
- (4) Transaction of any other business that may properly come before the meeting or any adjournments thereof.

Only shareholders of record at the close of business on April 19, 2006 are entitled to notice of, and to vote at the meeting, or any adjournment or adjournments thereof.

Whether or not you plan to attend the meeting, please fill in, date and sign the enclosed proxy and return it promptly in the enclosed envelope. The prompt return of your proxy will assist us in preparing for the Annual Meeting. The proxy does not require any postage if it is mailed in the United States or Canada.

By Order of the Board of Directors,

Nanette W. Mantell, Esq.
Secretary

Dated: April 24, 2006

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DUSA PHARMACEUTICALS, INC.

PROXY STATEMENT

The accompanying proxy is solicited on behalf of the Board of Directors of DUSA Pharmaceuticals, Inc. ("DUSA" or the "Company") for use at the Company's 2006 Annual Meeting of Shareholders and at any adjournments or postponements thereof. The Annual Meeting will be held on Thursday, June 15, 2006, at 11:00 a.m., at the Company's principal executive offices at the address set forth below. If properly signed and returned, and not revoked, the proxy will be voted in accordance with the instructions it contains. The persons named in the accompanying proxy will vote the proxy for the Board of Directors' slate of directors and for the other matters listed on the proxy as recommended by the Board of Directors unless contrary instructions are given.

The Company, a New Jersey corporation, maintains principal executive offices at 25 Upton Drive, Wilmington, Massachusetts 01887. This proxy statement and the accompanying form of proxy are being mailed to shareholders on or about April 26, 2006. DUSA's Annual Report for 2005, including financial statements for the year ended December 31, 2005, is being mailed to shareholders at the same time.

Shareholders Entitled To Vote.

Holders of record of shares of DUSA common stock at the close of business on April 19, 2006 are entitled to notice of and to vote at the Annual Meeting and at any and all adjournments or postponements of the meeting. On the record date there were 19,025,300 shares of common stock without par value ("Common Stock") outstanding and entitled to vote. These shares were the only shares outstanding of the Company. Each share entitles its owner to one vote. The holders of one-third of the shares that are outstanding and entitled to vote at the Annual Meeting must be present, in person or represented by proxy, in order to constitute a quorum for all matters to come before the meeting.

Other than the vote for the election of directors, which requires a plurality of the votes cast, each matter to be submitted to the shareholders requires the affirmative vote of a majority of the votes cast at the meeting for such matter. For purposes of determining the number of votes cast with respect to a particular matter, only those votes cast "FOR" or "AGAINST" are included. Abstentions and broker non-votes are counted only for purposes of determining whether a quorum is present at the meeting. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner. The nominees may vote the shares only on matters deemed routine, such as the election of directors and ratification of the selection of the independent registered public accounting firm. As of the record date, the Company's management currently owns approximately one percent (1%) of the Company's outstanding Common Stock.

How To Vote.

If you are a shareholder of record (that is, a shareholder who holds shares in his/her own name), you can vote by attending the Annual Meeting in person, or by signing, dating and returning your proxy card in the enclosed postage-paid envelope. If you sign and return your proxy card but do not give voting instructions, the shares represented by that proxy will be voted "FOR" Proposals 1, 2 and 3 and will be voted in the proxy holder's discretion as to other matters that may come before the Annual Meeting.

If your shares are held in "street name" (that is, in the name of a bank, broker or other holder of record), you will receive instructions from the holder of record that you must follow in order for your shares to be voted.

Changing Your Vote.

You may change your vote at any time before the proxy is exercised, by executing and delivering a timely and valid later-dated proxy, by voting by ballot at the Annual Meeting or by giving written notice to the Secretary of the Company. Attendance at the Annual Meeting will not have the effect of revoking a proxy unless you give proper written notice of revocation to the Secretary before the proxy is exercised or you vote by written ballot at the Annual Meeting.

Reduce Duplicate Mailings.

The Company is required to provide an Annual Report and proxy statement to all shareholders. If you are a shareholder of record and have more than one account in your name or at the same address as other shareholders of record, you may authorize the Company to discontinue mailings of multiple proxy statements, Annual Reports and other information statements. To do so, please mark the designated box on each proxy card for which you wish to *discontinue* to receive duplicate documents. Your consent to

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stop delivery of the Annual Report, proxy statements and other information statements shall be effective for five (5) years or until you revoke your consent. You may revoke your consent at any time by contacting Ms. Shari Lovell, in writing, at the Company's office located at 555 Richmond Street West, Suite 300, Toronto, Ontario M5V 3B1 Canada, or by calling 1-800-607-2530. Delivery of individual copies of the documents shall resume within thirty (30) days of our receipt of your request.

PROPOSAL NO. 1 - ELECTION OF DIRECTORS

Eight (8) directors will be elected to hold office until the next Annual Meeting of Shareholders and/or until their successors have been duly elected and qualified. The persons named on the accompanying proxy will vote all shares for which they have received proxies FOR the election of the nominees named below unless contrary instructions are given. In the event that any nominee should become unavailable, shares will be voted for a substitute nominee unless the number of directors constituting a full board is reduced. Directors are elected by plurality vote.

NOMINEES

Set forth below is certain information about the nominees for election to the DUSA Board of Directors. The name, age and current position with the Company, if any, of each director is listed below, followed by summaries of their backgrounds and principal occupations. All of the nominees, except Mr. Doman and Dr. Penneys, were elected to the Board of Directors at the 2005 Annual Meeting of Shareholders. All of the nominees, except Mr. Doman, are currently serving as directors of the Company.

Name	Age	Position	Date First Elected
D. Geoffrey Shulman, MD, FRCPC	51	Chairman of the Board, Chief Executive Officer and Director	9/05/1991
John H. Abeles, MD ⁽¹⁾⁽³⁾	61	Director	8/02/1994
David M. Bartash ⁽¹⁾⁽²⁾⁽³⁾	63	Director	11/16/2001
Robert F. Doman	56	President and Chief Operating Officer	
Jay M. Haft, Esq. ⁽¹⁾⁽²⁾	70	Vice Chairman of the Board and Lead Director	9/16/1996
Richard C. Lufkin ⁽¹⁾⁽³⁾	59	Director	1/27/1992
Magnus Moliteus ⁽²⁾⁽³⁾	67	Director	7/25/2003
Neal S. Penneys, MD, Ph.D.	64	Director	3/10/2006

(1) Member of the Audit Committee.

(2) Member of the Compensation Committee.

(3) Member of the Nominating and Corporate Governance Committee.

Dr. Penneys was elected to our Board of Directors on March 10, 2006, upon consummation of our merger with Sirius Laboratories, Inc., pursuant to the terms of a merger agreement dated as of December 30, 2005, as amended, by and among DUSA, Sirius Laboratories, Inc. and certain shareholders of Sirius. Under such merger agreement, DUSA was required to increase the size of its Board of Directors by one (1) director and cause Dr. Penneys to be appointed to fill such vacant board position until the date of the next applicable meeting of DUSA Shareholders. In addition, DUSA was required to recommend that its Nominating and Corporate Governance Committee select Dr. Penneys to be included as a nominee to serve as a member of the Board of Directors on the slate of nominees to be voted upon at the 2006 Annual Meeting of Shareholders. DUSA's obligation to nominate Dr. Penneys, or a substitute, continues through the expiration of the period of time any milestone payment may be paid pursuant to the terms of the merger

agreement, provided that during such period, Dr. Penneys (or such substitute board nominee as may be recommended by the representatives of the Sirius shareholders and selected by DUSA's Nominating and Corporate Governance Committee should Dr. Penneys become unable or unwilling to serve) qualifies to serve on DUSA's Board of Directors pursuant to its governance documents and applicable law.

D. Geoffrey Shulman, MD, FRCPC, is the Company's founder and has been our CEO since the Company's inception in 1991. He served as our Chairman from 1991 through 2003 and was reappointed to that position in January 2005. He served as our President from 1991 to 2004. Dr. Shulman also participates, on a limited basis, in a private dermatology practice.

John H. Abeles, MD, who serves as the Chairman of our Nominating and Corporate Governance Committee, is the President and founder of MedVest, Inc. which, since 1980, has provided consulting services to health care and high technology companies. Dr. Abeles is a member of the Boards of Directors of I-Flow Corporation, Oryx Technology Corp. and Molecular Diagnostics Inc.

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David M. Bartash is the President and founder of Bartash and Company, a consulting company which, since 1990, has been providing consulting services to the healthcare industry, including research for the healthcare investment community and support services for venture start-ups.

Robert F. Doman has been employed by the Company as President and Chief Operating Officer since January 2005. From 2000 until 2004, Mr. Doman served as President of Leach Technology Group, the medical device division of Leach Holding Corporation. From 1999 to 2000, he was President, Device Product Development, of West Pharmaceutical Services, a manufacturer of systems and device components for parentally administered medicines and drugs. Prior to joining West Pharmaceutical Services, he worked for the Convatec division of Bristol-Myers Squibb from 1991 to 1999 in positions that included: Vice President, Worldwide Marketing and Business Development; Vice President and General Manager, U.S. Wound and Skin Care; and Vice President, U.S. Operations.

Jay M. Haft, Esq., who serves as the Vice Chairman of the Board, Lead Director and Chairman of our Compensation Committee, is a strategic and financial consultant for growth-stage companies. Since 2005, Mr. Haft has been a partner and a member of the Investment Committee of Columbus Nova, a private investment firm. He was a senior corporate partner of the law firm of Parker, Duryee, Rosoff & Haft from 1989 to 1994 and was of counsel to Parker, Duryee, Rosoff & Haft from 1994 until 2002. Mr. Haft is a member of the Boards of Directors of DCAP Group Inc., Oryx Technology Corp. and Moscow CableCorp.

Richard C. Lufkin, who serves as the Chairman of our Audit Committee, has been the principal of Enterprise Development Associates, a proprietorship formed in 1985 which provides consulting and venture support services to early stage technology-based companies, principally in the life sciences sector. He is also a co-founder and former Chief Financial Officer of Linguagen Corp., a development-stage, privately-held, biotechnology firm.

Magnus Moliteus has been a consultant to the healthcare industry and Chairman of COM Consulting Inc., a privately held firm, which enhances Swedish-American relations particularly between health care companies, since 2001. From 1995 to 2001, Mr. Moliteus served as Executive Director of Invest in Sweden Agency, U.S., a Swedish government agency. From 1977 to 1990, he was Chief Executive Officer of Pharmacia, Inc. (now owned by Pfizer, Inc.).

Neal S. Penneys, MD, PhD has served on the Company's Board of Directors since March 2006. Dr. Penneys is currently a dermatopathologist at AmeriPath, Inc., a provider of anatomic pathology, cancer diagnostic and related healthcare information services, and has served in such capacity since February 2001. Prior to joining Ameripath, from 1991 to 2001, Dr. Penneys was Chairman of Dermatology at the Saint Louis University Health Sciences Center and, during part of such time, also held the positions of Associate Dean and Chief Operating Officer of the University Medical Group.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR EACH NOMINEE.

DIRECTOR COMPENSATION

Currently, the only employee-director is Dr. Shulman. Mr. Doman, if elected by shareholders at the Annual Meeting, will also be an employee-director. Employee-directors receive no cash compensation for service as a director or as member of any committee. The Board has determined that all of the outside directors are independent, as independence is defined under the rules of the NASDAQ Stock Market. Outside directors receive \$25,000 per year, as annual compensation, regardless of the number of Board or Committee meetings they attend. Directors serving on the Audit Committee receive an additional \$5,000 per year. Beginning in 2005, the Chairman of the Audit Committee and the Lead Director receive an additional \$5,000 per year. Directors are also paid out-of-pocket expenses related to their

attendance at meetings of the Board and Committees. Under the Company's current 1996 Omnibus Plan, as amended, which expires on June 6, 2006, all directors are awarded options to purchase up to 15,000 shares of Common Stock on June 30th of their first year of service or as of the close of business thirty (30) days following their election, whichever shall first occur, and options to purchase up to 10,000 shares of Common Stock on June 30th of each year following their re-election. All options granted to directors vest immediately. Under the proposed new 2006 Plan, only non-employee directors will be eligible to receive the automatic grants set forth above. If elected, Dr. Shulman and Mr. Doman will not receive these grants.

MEETINGS AND COMMITTEES OF THE BOARD

During the year ended December 31, 2005 there were fifteen (15) meetings of the Board of Directors. Each incumbent director attended at least 75% of the aggregate of the meetings of the Board of Directors and of all of the committees on which he serves. The Board of Directors has established an

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Audit Committee, Nominating and Corporate Governance Committee and a Compensation Committee. Mr. Haft, the Vice-Chairman of the Board and Lead Director, presides at meetings of the independent directors.

The members of the Audit Committee currently are Mr. Lufkin, who serves as its Chairman, Messrs. Haft, Bartash and Dr. Abeles. All of the members are independent directors in accordance with the rules of the NASDAQ Stock Market and applicable federal securities laws and regulations. In addition, the Board of Directors has determined that Mr. Lufkin qualifies as an audit committee financial expert and has designated him to that position. The Audit Committee provides oversight of the Company's accounting functions and acts as liaison between the Board of Directors and the Company's independent registered public accounting firm. The Committee reviews with the independent auditors of the firm the Company's unaudited quarterly financial statements, the planning and scope of the audits of the Company's financial statements, the results of those audits and the adequacy of internal accounting controls, and monitors other corporate and financial policies. In performing these functions, the Audit Committee meets periodically with the independent auditors (including in private sessions), and with management. In addition, the Audit Committee selects the independent registered public accounting firm for appointment by the Board of Directors. The Audit Committee operates under a written charter adopted and approved by the Board of Directors, a copy of which is located on the Company's website at www.dusapharma.com, and met four (4) times during 2005.

The members of the Nominating and Corporate Governance Committee currently are Dr. Abeles, who serves as its Chairman, and Messrs. Lufkin, Bartash and Moliteus. All of the members of our Nominating and Corporate Governance Committee are independent directors in accordance with the rules of the NASDAQ Stock Market. The Nominating and Corporate Governance Committee's purpose is to identify and evaluate the qualifications of individuals to become members of the Board of Directors, to select the director nominees, to develop and recommend corporate governance principles to the Board of Directors and to provide oversight and guidance to the Board of Directors to assure compliance with its corporate governance policies and principles. There were four (4) meetings of this Committee in 2005. Shareholders who wish to suggest qualified candidates to the Nominating and Corporate Governance Committee for director should write to: Administrator, Nominating and Corporate Governance Committee, DUSA Pharmaceuticals, Inc., 25 Upton Drive, Wilmington, Massachusetts 01887 stating, in detail, the qualifications of such persons for consideration by the Nominating and Corporate Governance Committee. A copy of the Nominating and Corporate Governance Committee Charter is located on the Company's website at www.dusapharma.com.

Among the central purposes of the Nominating and Corporate Governance Committee are identifying individuals qualified to become members of the Board of Directors and reviewing the qualifications of candidates and selecting the director nominees to be voted on at each annual meeting of shareholders. In effectuating those purposes, the Nominating and Corporate Governance Committee is charged with ensuring that the nominees for membership on the Board of Directors are of the highest possible caliber and are able to provide insightful, intelligent and effective guidance to the management of the Company. The following criteria have been identified by the Nominating and Corporate Governance Committee, and adopted by the Board of Directors, to guide the Nominating and Corporate Governance Committee in selecting nominees:

1. Directors should be of the highest ethical character and share the values of DUSA;
2. Directors should have personal and professional reputations that compliment and enhance the image and standing of DUSA;
3. Directors should be leaders in their field of endeavor, with exemplary qualifications;
4. The Committee should generally seek current and/or former officers and/or directors of companies and organizations, including scientific, government, educational and other non-profit institutions;

5. The Committee should seek directors so the Board is comprised of directors who collectively are knowledgeable in the fields of pharmaceuticals and device development, particularly those areas of research, development and commercialization undertaken by the Company;
6. Directors should have varied educational and professional experiences and backgrounds who, collectively, provide meaningful counsel to management;
7. Directors should generally not serve on more than six (6) boards;
8. At least two-thirds of the directors on the Board should be independent as defined by The NASDAQ Stock Market, Inc. and should not have any real or apparent conflicts of interest in serving as a director; and
9. Each director should have the ability to exercise sound, independent business judgment.

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The Committee applies the same criteria to all nominees for the Board irrespective of the source of such nominee.

Absent extenuating circumstances, each member of the Board of Directors is expected to attend the 2006 Annual Meeting of Shareholders. Five (5) of the directors, who were directors at such time, attended the 2005 Annual Meeting of Shareholders.

The members of the Compensation Committee currently are Mr. Haft, who serves as its Chairman, and Messrs. Bartash and Moliteus. The Compensation Committee considers executive compensation of the Company's key officers and compensation of directors. The Committee also considers employee benefits which may be appropriate as the Company grows, and develops policies and procedures. The Compensation Committee met three (3) times in 2005. It also met twice in February 2006 to establish cash compensation for 2006 and bonuses for 2005.

Interest of Certain Persons in Matters to be Acted Upon

As set forth under the section entitled "Adoption of 2006 Equity Compensation Plan," the Company is seeking shareholder approval of its 2006 Equity Compensation Plan (the "2006 Plan"). Pursuant to the terms of the 2006 Plan, each non-employee director who re-elected to the Board at an annual meeting, shall automatically receive, on June 30th following such re-election, an option to purchase 10,000 shares of Common Stock, the same amount as was provided under the Company's 1996 Omnibus Plan, as amended. As such, if approved by the Company's shareholders at the 2006 Annual Meeting, options to purchase an aggregate of 60,000 shares of Common Stock, comprised of 10,000 options to each of the Company's six (6) non-employee directors, will be granted.

PROPOSAL NO. 2 - ADOPTION OF 2006 EQUITY COMPENSATION PLAN

General:

The 2006 Equity Compensation Plan (the "2006 Plan") provides for the grant of incentive stock options, nonqualified stock options, stock awards, and stock appreciation rights to (i) our employees, consultants, and advisors; (ii) the employees, consultants, and advisors of the Company's parents, subsidiaries, and affiliates; and (iii) the Company's non-employee directors.

The Board of Directors (referred to as the Board) has approved the 2006 Plan and is submitting the 2006 Plan for shareholder approval. Shareholder approval is being sought: (i) so that the compensation attributable to grants under the 2006 Plan may qualify for an exemption from the \$1,000,000 deduction limit under Section 162(m) of the Internal Revenue Code (referred to as the Code) (see "Section 162(m) under U.S. Federal Income Tax Consequences" below); (ii) in order for incentive stock options to meet the requirements of the Code; and (iii) in order to meet NASDAQ requirements.

The following is a summary of the material terms of the 2006 Plan, which is qualified in its entirety by reference to the 2006 Plan. A copy of the 2006 Plan is attached as Appendix A to this proxy statement.

Purpose of the 2006 Plan:

The 2006 Plan is intended to provide a means by which the Company's employees, consultants, advisors, and directors can acquire and maintain stock ownership, thereby strengthening their commitment to the Company's success. The 2006 Plan will provide an incentive for employees, consultants, advisors, and directors to focus their attention on managing the Company as equity owners and will align their interests with the shareholders.

Description of the 2006 Plan:

Administration: The 2006 Plan will be administered by the Compensation Committee of the Board of Directors (referred to as the committee). However, the Board may ratify or approve any grants as it deems appropriate. The committee has the authority to: (i) determine the individuals to whom grants will be made under the 2006 Plan; (ii) determine the type, size, and terms of each grant; (iii) determine the time when grants will be made and the duration of any applicable exercise or restriction period; (iv) amend the terms of any previously issued grant; and (v) deal with any other matters arising under the 2006 Plan.

Shares: The maximum aggregate number of shares of the Company's Common Stock that may be issued under the 2006 Plan under any form of award may not exceed the lesser of: (i) 20% of the total number of shares of our common stock issued and outstanding at any given time less the number of shares issued and outstanding under any other equity compensation plan of the Company at such time; or (ii) 3,888,488 shares less the number of shares issued and outstanding under any other equity

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compensation plan of the Company from time to time. The maximum number of shares of Common Stock that may be granted to any individual during any calendar year is 300,000. The maximum share limits are subject to adjustment in the event of a stock dividend, spinoff, recapitalization, stock split, combination, exchange of shares, reclassification, change in par value, merger, reorganization, or consolidation, or other corporate change. If any grant expires, is forfeited, or cancelled or otherwise terminates without having been exercised, the shares subject to the grant will again become available for grant under the 2006 Plan.

Eligibility: The following persons are eligible to participate in the 2006 Plan:

The Company's employees and employees of our parents, subsidiaries, and affiliates.

The Company's non-employee directors.

Consultants and advisors who perform services for us or our parents, subsidiaries, or affiliates (referred to as Key Advisors).

The Committee will select the employees, non-employee directors and Key Advisors who are eligible for grants under the 2006 Plan. As of April 11, 2006, approximately 82 employees and six (6) non-employee directors were eligible to participate in the 2006 Plan. The Company also utilizes the services of a number of Key Advisors who are also eligible to participate in the 2006 Plan.

Options: The Committee will select the employees, non-employee directors, and Key Advisors who will receive stock options and will determine the number of shares of stock that will be subject to each grant of stock options. The Committee may grant nonqualified stock options (NSOs) or incentive stock options (ISOs). ISOs may be granted only to employees or the employees of our parent or subsidiary corporation as defined in the Code. NSOs may be granted to employees, non-employee directors, or Key Advisors.

The Committee will establish the exercise price of each option on the date of grant. The exercise price of an NSO or ISO may be equal to or greater than the fair market value of the underlying shares of stock on the date of grant. However, if the grantee of an ISO is a person who holds more than 10% of the combined voting power of all classes of the Company's outstanding stock or the outstanding stock of a parent or subsidiary, the exercise price per share of the ISO must be at least 110% of the fair market value of a share of stock on the date of grant. If the aggregate fair market value of shares of stock, determined on the date of grant, with respect to which ISOs become exercisable for the first time by a grantee during any calendar year exceeds \$100,000, the options in excess of this limit will be treated as NSOs.

Options granted to non-exempt employees under the Fair Labor Standards Act may not be exercisable for at least six (6) months after the date of grant, except as determined by the Committee upon death, disability, retirement, or change in control.

The Committee determines the term of each stock option, which will not exceed seven (7) years (five (5) years in the case of an ISO granted to a 10% owner). The Committee may establish such vesting and other conditions with respect to options as it deems appropriate. The Committee may accelerate the exercisability of any or all outstanding options at any time for any reason. The Committee may provide in a grant instrument that the grantee may elect to exercise part or all of an option before it otherwise has become exercisable, and receive restricted stock.

Options may be exercised while the grantee is an employee, director, or Key Advisor of the Company, or any parent, subsidiary or affiliate of the Company. Unless the Committee determines otherwise, but in any event no later than the date of expiration of the option term, an option may be exercised after the termination of employment or service as follows:

For any reason other than disability, death, or termination for misconduct, any vested option may be exercised within 90 days after the date on which the grantee ceases to be employed by or provide services to the Company.

Due to being disabled, any vested option may be exercised within one (1) year after the date on which the grantee ceases to be employed by or provide services to the Company.

Due to death, all of the unexercised outstanding options will become exercisable and may be exercised within one (1) year from the grantee's date of death.

In the event a grantee ceases to be employed by the Company on account of a termination for misconduct, any option held by the grantee will terminate at the time that the date on which the grantee ceases to be employed by or provide services to the Company or the date on which such option would otherwise expire, if earlier.

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To the extent that any of the Company's sponsored plans or arrangements, or any agreement to which the Company is a party expressly provides for a longer exercise period for an option under applicable circumstances than the exercise period that is provided for under this 2006 Plan under those circumstances, the exercise period set forth in such plan, arrangement, or agreement applicable to such circumstances will apply in lieu of the exercise period provided for this 2006 Plan.

A grantee may pay the exercise price of an option: (i) in cash; (ii) by payment through a broker in accordance with procedures permitted by Regulation T of the Federal Reserve Board; or (iii) by such other method as the Committee may approve. If a grantee uses shares of the Company's Common Stock to exercise an option, the shares must have been held by the grantee for the requisite period of time to avoid adverse accounting consequences to the Company.

Each individual who agrees to become a non-employee director will receive, on June 30th of the first year of such service or as of the close of business 30 days following his/her election, whichever occurs first, and without the exercise of the discretion of any person, an NSO to purchase 15,000 shares of the Company's Common Stock at an exercise price equal to the fair market value on the date the NSO is granted. Thereafter, on June 30th of each year, each individual who is a continuing non-employee director will receive automatically an NSO to purchase 10,000 shares of the Company's Common Stock. Each NSO will vest in full on the date of the grant and have a term not to exceed seven (7) years from the date of grant, or, if later, the date the individual becomes a non-employee director. Notwithstanding the exercise period of any such NSO, all such NSOs will immediately become exercisable upon: (i) the death of non-employee director while serving as such; or (ii) upon a change of control (as defined in "Consequences of a Change in Control" below).

Stock Awards: The Committee may grant stock awards to employees, Key Advisors, or non-employee directors, subject to restrictions or no restrictions, as determined by the Committee. The Committee may establish conditions under which restrictions on stock awards will lapse over a period of time or according to such other criteria as the Committee deems appropriate, including restrictions based upon the achievement of specific performance goals. During the restriction period, the grantee will not have the right to vote shares of stock awards or to receive any dividends or other distributions paid on such shares. If the grantee's employment or service terminates during the restriction period or if any other conditions are not met, unless the Committee determines otherwise, the stock award will terminate with respect to all of the shares of stock covered by the stock award as to which the restrictions have not lapsed, and those shares of stock will be forfeited and immediately returned to the Company. The Committee may hold stock awards in escrow until all restrictions on shares have lapsed.

Stock Appreciation Rights: The Committee may grant stock appreciation rights (SARs) to employees, non-employee directors, or Key Advisors separately or in tandem with any option. The Committee will establish the base amount of each SAR at the time the SAR is granted. Unless the Committee determines otherwise, the base amount of an SAR will be the exercise price of the related option, or if there is no related option, an amount at least equal to the fair market value of a share of stock on the date of grant of the SAR. An SAR will be exercisable during the period specified by the Committee in the grant instrument and will be subject to vesting and other restrictions as specified in the grant instrument. The Committee may accelerate the exercisability of any outstanding SARs. A tandem SAR is exercisable only during the period when the option to which it is related is also exercisable.

When a grantee exercises an SAR, the grantee will receive an amount equal to the value of the stock appreciation for the number of SARs exercised. The Company will pay the stock appreciation in shares of the Company's Common Stock. The stock appreciation for an SAR is the amount by which the fair market value of the underlying stock on the date of exercise exceeds the base amount of the SAR.

Performance-Based Compensation: The Committee may grant employees stock awards that are intended to meet the requirements of "qualified performance-based compensation" under Section 162(m) of the Code (see "Section 162(m)

under Federal Income Tax Consequences below). In that event, at the beginning of the performance period, the Committee will establish in writing (i) the objective performance goals that must be met; (ii) the threshold, target, and maximum amounts that may be paid if the performance goals are met; and (iii) any other conditions that the Committee deems appropriate. The Committee must establish the performance goals either before the performance period or during a period ending no later than the earlier of ninety (90) days after the beginning of the performance period, the date on which 25% of the performance period has been completed, or such other date as may be permitted under the Code.

The Committee will establish objective performance goals for each grantee related to the grantee's business unit or the Company's performance and the performance of its parents, subsidiaries and affiliates as a whole, or any combination of the foregoing. The objectively determinable performance goals will be based on one or more of the following criteria: stock price, earnings per share, net earnings, operating earnings, return on assets, shareholder return, return on equity, growth in assets, unit volume, sales,

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market share, or strategic business criteria consisting of one or more objectives based on meeting specified revenue goals, market penetration goals, geographic business expansion goals, cost targets, or goals relating to acquisitions or divestitures.

At the end of each performance period, the Committee will certify the results of the performance goals and the extent to which the performance goals have been met. If stock awards are granted as qualified performance based compensation, the total amount that may be paid or delivered to a grantee with respect to stock awards for any year in the performance period will not exceed 100,000 shares of stock. The Committee may provide for payment of grants in the event of the death or disability of a participant, or under other circumstances.

Employees Subject to Taxation Outside the United States: The Committee may make grants on terms different from those specified in the 2006 Plan, including granting options with a term longer than seven (7) years if appropriate to assure favorable treatment, with respect to persons who are subject to taxation outside the United States as necessary to achieve the purposes of the 2006 Plan.

Transferability of Grants: Grants are not transferable by the grantee except by will or the laws of descent or, in the case of a grant other than an ISO, pursuant to a domestic relations order, subject to Committee consent. The Committee may allow a grantee to transfer an NSO to family members or a trust or other entity for the benefit of family members.

Consequences of a Change in Control: If a change in control occurs, unless the Committee determines otherwise:

The Company will provide each grantee with outstanding awards written notice of such change in control.

All outstanding options and SARs will automatically accelerate and become fully exercisable.

Any restrictions on outstanding stock awards will immediately lapse.

Upon a change in control, unless the Committee determines otherwise, the Committee may also:

Determine that outstanding options and SARs that are not exercised will be assumed by, or replaced with comparable options or rights by the surviving corporation, and other outstanding grants will be converted to similar grants of the surviving corporation.

Require that grantees surrender their outstanding options and SARs in exchange for payment, in cash or shares of the Company's Common Stock (as the Committee determines) in an amount by which the then fair market value of the stock exceeds the exercise price.

A change in control means the consummation of a transaction that is the subject of a determination (which may be made effective as of a particular date specified by the Board) by the Board, made by a majority vote that a change in control has occurred, or is about to occur. A change in control will be deemed to have occurred as of the first day either of the following occurs:

The acquisition by any individual, entity, or group of 35% or more of the combined voting power of the Company's outstanding stock subject to exceptions described in the 2006 Plan.

Approval by the shareholders of: (i) a plan of liquidation or dissolution; (ii) an agreement for the sale or disposition of all or substantially all of the Company's assets; or (iii) a merger, consolidation, or reorganization involving the Company, other than a merger, consolidation, or reorganization that would result in the Company's voting securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the combined voting power of

the Company's voting securities outstanding immediately after such merger, consolidation, or reorganization.

A change in control will not occur when a restructuring, reorganization, merger, or other change in capitalization in which persons or entities who own an interest in the Company on the date hereof maintain more than a 50% interest in the resultant entity. Additionally, a change in control will not occur, with respect to a grantee, if the grantee is part of a purchasing group that consummates the change in control transaction.

Amendment and Termination of the Plan: The 2006 Plan will terminate on April 10, 2016. The Board may terminate or amend the 2006 Plan earlier at any time. However, the Board will not amend the 2006 Plan without shareholder approval if shareholder approval is required to comply with the Code or applicable laws, or to comply with applicable stock exchange requirements.

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U.S. Federal Income Tax Consequences:

The following description of the federal income tax consequences of grants under the 2006 Plan is a general summary. State, local, and other taxes may also be imposed in connection with grants.

Incentive Stock Options: In general, a grantee will not recognize taxable income upon the grant or exercise of an ISO, and the Company will not be entitled to any business expense deduction with respect to the grant or exercise of an ISO. Upon the exercise of an ISO, however, the excess of the fair market value of the shares received on the date of exercise over the exercise price of the option will be included as an adjustment for purposes of the alternative minimum tax.

If a grantee holds the shares acquired upon exercise of an ISO for at least two (2) years after the date of grant and for at least one (1) year after the date of exercise, when the grantee disposes of the shares, the difference, if any, between the sale price of the shares and the exercise price of the option will be treated as long-term capital gain or loss. If a grantee disposes of the shares before satisfying these holding period requirements (referred to as a disqualifying disposition), the grantee will recognize ordinary income at the time of the disqualifying disposition, in an amount equal to the excess of the fair market value of the shares at the time the option was exercised over the exercise price of the option, or an amount equal to the gain on the disposition, if less. The balance of the gain realized, if any, will be short-term or long-term capital gain, depending upon the length of the time that the shares have been held after the date of exercise. In general, the Company will be allowed a business expense deduction to the extent a grantee recognizes ordinary income.

Nonqualified Stock Options: In general, a grantee who receives an NSO will recognize no income at the time of the grant of the option. Upon exercise of an NSO, a grantee will recognize ordinary income in an amount equal to the excess of the fair market value of the shares on the date of exercise over the exercise price of the option. The basis in shares acquired upon exercise of an NSO will equal the fair market value of such shares at the time of exercise, and the holding period of the shares (for capital gain purposes) will begin on the date of exercise. In general, the Company will be entitled to a business expense deduction in the same amount and at the same time as the grantee recognizes ordinary income.

Stock Awards: A grantee who receives a stock award generally will not recognize taxable income until the stock is transferable by the grantee or no longer subject to a substantial risk of forfeiture for federal tax purposes, whichever occurs first. When the stock is either transferable or is no longer subject to a substantial risk of forfeiture, the grantee will recognize ordinary income in an amount equal to the fair market value of the shares, less any amounts paid for the shares, at that time. The Company generally will be entitled to a business expense deduction in the same amount.

A grantee may elect to recognize ordinary income when a restricted stock award is granted in an amount equal to the fair market value of the shares, less any amount paid for the shares, at the date of grant, determined without regard to the restrictions. The Company generally will be entitled to a corresponding business expense deduction in the same year.

Stock Appreciation Rights: There are generally no federal income tax consequences to a grantee upon the grant of an SAR. Instead, when payments are made to the grantee, the grantee will recognize ordinary income in an amount equal to the cash received and the fair market value of any shares received. The Company generally will be entitled to a corresponding business expense deduction when the grantees recognize ordinary income.

Excise Taxes: Under certain circumstances, the accelerated vesting of grants in connection with a change in control could be deemed an excess parachute payment for purposes of the parachute tax provisions of Section 280G of the Code. In that event, a grantee could be subject to a 20% excise tax and the Company could be denied a tax

deduction with respect to a portion of the grants under the 2006 Plan.

Section 162(m): Section 162(m) of the Code generally disallows a federal income tax deduction for compensation paid in excess of \$1,000,000 in any taxable year to the chief executive officer or any of the four (4) other most highly compensated executive officers. The Code has an exception to the deduction limit for qualified performance based compensation, if, among other requirements, the material terms of the plan are disclosed to and approved by the shareholders. The Company has structured the 2006 Plan so that compensation resulting from the grant of stock awards, stock options, and SARs may qualify as qualified performance-based compensation and be deductible.

Canadian Income Tax Consequences:

Employees

Options: A Canadian resident is subject to tax on income, computed in Canadian dollars, from all worldwide sources. A participant who receives an option to acquire Common Stock issued as a result of his or her employment will not realize any income when the stock option is granted. At the time the stock

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option is exercised, unless the election described below is available and the election is made, the Canadian resident employee is considered to have received a taxable employment benefit equal to the difference between the fair market value of the shares at the time the option is exercised and the price paid for the shares under the option agreement. This employment benefit is included in income and is subject to tax in Canada. The Canadian resident employee may be entitled to a deduction from income equal to 50% of the amount of the taxable employment benefit provided that the amount paid by the employee to acquire the Common Stock is not less than the fair market value of the shares at the time the option was granted, the employee is dealing at arm's length with the Company before and immediately after the option is granted and the shares purchased are prescribed shares (generally non-convertible ordinary common shares).

A Canadian resident individual may be able to defer the realization of income that would otherwise be included in the year the Company stock option is exercised. This deferral is available, in certain circumstances, when the employee exercises a stock option in respect of prescribed shares that are listed on NASDAQ or another approved stock exchange and the employee elects to defer the income inclusion. If such an election is made, the employee stock option benefit that the individual would otherwise be required to include in the individual's income for the year in which the option is exercised may be deferred. In order to claim a deferral, an election must be timely filed in the proper form and manner and is subject to certain limitations. If available, the deferral applies only to the first CDN\$100,000 worth of options that vest in any year. The value of an option for this purpose is considered to be equal to the value of the optioned share at the time the option was granted.

Restricted Stock and Restricted Stock Units: In general, where the Company has agreed to sell or issue shares or restricted stock units to an employee, the Canadian tax consequences described above with respect to stock option plans are generally applicable. A Canadian resident employee who receives grants of stock pursuant to the 2006 Plan which are subject to restrictions on transfer for a restriction period either based on a specified period of time or the attainment of performance goals, will generally be subject to the stock option rules. The stock option rules will also generally apply where restricted stock units are issued to a Canadian employee. The employee would be required to include in income from employment an amount equal to the fair market value of the shares at the time the shares are acquired as a taxable employment benefit assuming the employee did not pay any amount to acquire the shares. The employee would not be entitled to claim either the 50% deduction or the deferral described above. If the shares are forfeited, the employee will be entitled to a deduction from income in the year of forfeiture only where the shares were held in trust by a trustee for the employee. Otherwise, if the shares are forfeited, the employee can claim a capital loss equal to the difference between the fair market value of the shares on the date of the award less any proceeds received on the forfeiture. Capital losses can only be applied against capital gains. When the shares are sold, the employee will realize either a capital gain or a capital loss.

Stock Appreciation Rights (SARs): If a Canadian resident employee receives SARs, the tax consequences described above with respect to stock option plans will be generally applicable if shares are issued in payment of the appreciation in the SAR or if the employee has the right to elect to receive shares or cash in payment. In these circumstances, an employee would include in income from employment an amount equal to the fair market value of the shares on the date of exercise less the base amount of the SAR. The employee might be entitled to the 50% deduction or deferral described above provided that the base amount of the SAR is at least equal to the fair market value of the shares on the date the SAR is granted. If the employee received a cash payment on the exercise of the SAR and did not have the right to elect to receive shares, the employee would be required to include the cash payment in income for the year of exercise and would not be entitled to a 50% deduction. Provided the base amount of each SAR is at least equal to the fair market value of a share on the grant date, the SAR should not be considered a salary deferral arrangement for Canadian tax purposes. If a SAR is considered to be a salary deferral arrangement, a Canadian resident employee would be required to recognize employment income in the year the SAR is granted.

Directors

For Canadian tax purposes, a member of the Board of Directors is taxed as an employee with respect to benefits which are received in his or her capacity as a director. Directors, including those who are not otherwise employed by the Company, will be taxed in the same manner as employees as described above.

Independent Contractors

Options: In general, consultants and advisors (referred to as Key Advisors) who are independent contractors are required to report business income on an accrual basis whether or not such income is received. Accordingly, Canadian resident Key Advisors may be subject to Canadian income tax on such business profits whether or not an amount has been received based on general principles of computation of business income.

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If a Key Advisor receives a grant of stock options in consideration for services performed by the Key Advisor, for tax purposes the grant of options will be considered to be a payment in kind in respect of those services and will be included in the computation of business income. As a payment in kind, the Key Advisor will generally be required to include the fair market value of the options received in computing the Key Advisor's business income for the year in which the options are granted. The cost to the Key Advisor of each option received will equal to the fair market value of the option at the time it is received.

The subsequent tax consequences to a Key Advisor who holds options to acquire shares of DUSA will normally depend on whether the Key Advisor holds the options as capital property or as part of the inventory of a business. How any DUSA stock options are held by a particular Key Advisor will be a question of fact that will depend on the particular circumstances of the Key Advisor.

Restricted Stock: A Canadian resident Key Advisor who receives a grant of restricted stock pursuant to the 2006 Plan will generally be required to include the fair market value of the stock received or receivable in the computation of business income for tax purposes, assuming the Key Advisor did not pay any amount to acquire the shares. A Key Advisor who receives restricted stock units will include in income in the year the units are granted an amount equal to the difference between fair market value of the units and any amount paid to acquire the units. The general tax consequences applicable to a Key Advisor who holds shares will also generally depend on whether the Key Advisor holds the shares as capital property or otherwise. On the assumption that the Key Advisor holds the shares as capital property, the Key Advisor will realize either a capital gain or a capital loss on a subsequent disposition of the shares. For purposes of computing the capital gain or capital loss, the adjusted cost base of the shares to the Key Advisor will generally be equal to the fair market value of the shares at the time they were acquired by the Key Advisor averaged with the adjusted cost basis of all the Company shares of the same class or series then held by the Key Advisor as capital property.

SARS: A Canadian resident Key Advisor who received a grant of SARs pursuant to the 2006 Plan, will be generally required to include an amount equal to the fair market value of the SAR in the computation of business income for the year the SARs are granted. When the SAR is exercised by the Key Advisor, an amount equal to appreciation in the SAR (generally the excess of the fair market value of the underlying shares less the base price and the value included in income at the grant date) will be included in the Key Advisor's income. If the Key Advisor receives shares in payment of the SAR, the consequences discussed above relating to the acquisition of shares under a stock option by a Key Advisor will apply.

Market Price of Shares:

The closing price of the Company's Common Stock on April 11, 2006 was \$6.65.

The 2006 Plan requires approval by the affirmative vote of a majority of the votes cast at the Annual Meeting of Shareholders.

The 2006 Plan is intended to replace the Company's 1996 Omnibus Plan (the "1996 Plan"), which will expire on June 6, 2006. As of March 31, 2006: (i) options to purchase 2,779,875 shares of Common Stock were outstanding under the 1996 Plan; and (ii) 29,722 shares in other awards have been granted under the 1996 Plan. An additional 402,277 shares are available for future awards under the 1996 Plan.

New Plan Benefits

Pursuant to the terms of the 2006 Plan, each non-employee director who re-elected to the Board at an annual meeting, shall automatically receive, on June 30th following such re-election, an option to purchase 10,000 shares of

Common Stock, the same amount as was set forth in the Company's 1996 Omnibus Plan, as amended. As such, if approved by the Company's shareholders at the 2006 Annual Meeting, options to purchase an aggregate of 60,000 shares of Common Stock, comprised of 10,000 options to each of the Company's six (6) non-employee directors, will be granted.

Under the 2006 Plan, all awards to grantees other than non-employee directors are granted at the discretion of the Board of Directors, the Compensation Committee or such other persons to whom authority may be delegated by the Board of Directors or Compensation Committee, and such awards are based upon criteria established by such persons. As such, at this time, the amount of any future awards to any grantees, other than the non-employee directors, under the 2006 Plan cannot be determined. Annual grants of options to officers and employees of the Company were made in March 2006 under the Company's 1996 Plan.

ACCORDINGLY, THE BOARD OF DIRECTORS BELIEVES ADOPTION OF THE 2006 PLAN IS IN THE BEST INTERESTS OF THE COMPANY AND ITS SHAREHOLDERS AND UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE 2006 PLAN.

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**PROPOSAL NO. 3 - RATIFICATION OF SELECTION OF
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of the Board of Directors has selected Deloitte & Touche LLP as the independent registered public accounting firm for the Company for the fiscal year 2006. Shareholder ratification of the appointment is not required under the laws of the State of New Jersey, but the Audit Committee has decided to ascertain the position of the shareholders on the appointment. The Board of Directors will reconsider the appointment if it is not ratified. A majority of the votes cast, in person or by proxy, at the Annual Meeting of Shareholders is required for ratification. A representative of Deloitte & Touche LLP will be present at the meeting to answer questions from shareholders and will have the opportunity to make a statement on behalf of the firm, if he or she so desires.

Audit Fees

The aggregate fees billed by Deloitte & Touche LLP for professional services rendered for the audit of the Company's annual financial statements for the fiscal years ended December 31, 2005 and 2004, and for the reviews of the financial statements included in the Company's Quarterly Reports on Form 10-Q for fiscal years 2005 and 2004 were \$334,170 and \$308,000, respectively.

Audit Related Fees

The aggregate fees billed by Deloitte & Touche LLP during fiscal year 2005 for the review of documents filed with the SEC related to the Company's filing of a Registration Statement on Form S-8, an amendment to another previously-filed Registration Statement on Form S-8, and fees related to services provided in connection with our merger with Sirius Laboratories, Inc, were \$45,000. The aggregate fees billed by Deloitte & Touche LLP during fiscal year 2004 for the review of documents filed with the SEC related to the private placement that occurred in February 2004, were \$9,000.

Tax Fees

The aggregate fees billed by Deloitte & Touche LLP for services rendered to the Company, for tax services for the fiscal years ended December 31, 2005 and 2004, were \$56,150 and \$51,000, respectively.

All Other Fees

There were no other fees billed by Deloitte & Touche LLP for professional services rendered for the fiscal year ended December 31, 2005 and 2004.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm

In considering the nature of the services provided by the independent registered public accounting firm, all of which were pre-approved in accordance with procedures required by the Audit Committee Charter, the Audit Committee determined that such services are compatible with the provision of independent audit services. The Audit Committee discussed these services with the independent auditor and Company management to determine that they are permitted under the rules and regulations concerning auditor independence promulgated by the SEC to implement the Sarbanes-Oxley Act of 2002, as well as the American Institute of Certified Public Accountants.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THIS PROPOSAL.

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BOARD AUDIT COMMITTEE REPORT¹

The Audit Committee of the Board of Directors (the Audit Committee) assists the Board of Directors by providing oversight of the Company's financial reporting process and its independent auditors. Management is responsible for preparing the Company's financial statements and the Company's independent auditors are responsible for auditing those financial statements. The Audit Committee is responsible for overseeing the conduct of these activities by the Company's management and selecting the independent auditors. The Audit Committee operates under a written charter adopted and approved by the Board of Directors. A brief description of the responsibilities of the Audit Committee is set forth above under the caption Meetings and Committees of the Board.

The Audit Committee reviewed and discussed the audited consolidated financial statements for the fiscal year ended December 31, 2005 with management. The Audit Committee also discussed with Deloitte & Touche LLP, the independent auditors, the matters required to be discussed by Statement on Auditing Standards No. 61,

Communication with Audit Committees. In addition, the Audit Committee received from Deloitte & Touche LLP the written disclosures and the letter required by Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*, and the Audit Committee discussed with the independent auditors their independence from the Company and its management. Additionally, the Audit Committee considered whether their provision of services to the Company beyond those rendered in connection with their audit and review of the Company's consolidated financial statements was compatible with maintaining their independence and the fees and costs billed and to be billed for those services as shown on page 14 of this proxy statement. The Audit Committee concluded that Deloitte & Touche LLP's provision of such services is compatible with Deloitte & Touche LLP's independence.

Based on its review, and the discussions with the Company's management and its independent auditors, the Audit Committee recommended to the Board of Directors that the Company's audited consolidated financial statements for the fiscal year ended December 31, 2005 be included in the Company's Annual Report on Form 10-K. The Audit Committee has also selected Deloitte & Touche LLP as the Company's independent registered public accounting firm for the fiscal year ended December 31, 2006.

John H. Abeles, MD
David M. Bartash
Jay M. Haft, Esq.
Richard C. Lufkin (Chairman)

⁽¹⁾ The material in the Audit Committee Report, Compensation Committee Report, and under the caption Performance Graph are not soliciting material, are not deemed filed with the SEC and are not to be incorporated by reference in any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this report and irrespective of any general incorporation language therein.

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BOARD COMPENSATION COMMITTEE REPORT ON EXECUTIVE COMPENSATION¹

The Compensation Committee of the Board of Directors (the Compensation Committee) is composed of three (3) independent non-employee directors whose names appear at the end of this report. The Compensation Committee is responsible for setting and administering the policies which govern annual executive salaries and cash bonus awards, and recommends participants and amounts of stock option awards to the Company's Board of Directors. The Compensation Committee evaluates, on a yearly basis, the performance, and determines the compensation of, the executive officers of DUSA. DUSA's Chairman and Chief Executive Officer, Dr. D. Geoffrey Shulman and its President and Chief Operating Officer, Robert F. Doman, are not members of the Compensation Committee, however, the Compensation Committee seeks input from Dr. Shulman and Mr. Doman regarding the performance of DUSA's other executive officers, as well as recommendations for their compensation. Dr. Shulman and Mr. Doman are present, at the invitation of the Compensation Committee, at its meetings, other than during consideration of their compensation.

DUSA's executive compensation programs consist of base salary, cash bonus incentives, stock option and stock grant awards. The goals of the Company's executive officer compensation policies are to attract, retain, and reward executive officers who contribute to DUSA's success, to align executive officer compensation with DUSA's performance and to motivate executive officers to achieve the Company's business objectives. The executive officers were evaluated by the Compensation Committee against established goals for 2005, including corporate goals and individual goals within each executive officer's area of responsibility.

With regard to base salary, the Compensation Committee believes that DUSA's officers should be compensated at levels comparable to the base salary of executive officers at similar public biotechnology or pharmaceutical companies. During 2005, the Compensation Committee received an analysis with survey data reporting the salaries and bonuses, as well as equity incentives, for executives of companies in these groups which was prepared by an independent consultant.

Generally, DUSA's Vice Presidents are eligible to receive up to 30% of their base salary as a cash bonus award. The Compensation Committee recognized that for 2005 these individuals largely achieved their personal goals and corporate goals. Therefore, the Compensation Committee concluded that DUSA's overall operational performance, particularly with regard to marketing and sales functions, attainment of increased sales targets, ramping up of manufacturing operations, timely completion of research and development activities, the completion of a major acquisition, the establishment of a foreign distribution agreement and enhanced medical information functions, justified favorable consideration of bonuses for its Vice Presidents. Accordingly, DUSA's Vice Presidents received cash bonus awards ranging from approximately 18% to 22% of their base salaries. These cash awards were paid in February 2006. DUSA's President and Chief Operating Officer, Robert F. Doman, is eligible to receive up to 40% of his base salary as a cash bonus. For 2005, Mr. Doman received 28% of his base salary as a cash bonus. DUSA's Executive Vice President of Sales and Marketing, who was hired in April 2006, will be eligible to receive up to 35% of his base salary as a cash bonus, however, consistent with the other officers, such percentage may be increased by the Company's Board of Directors.

The Compensation Committee also is using the survey data to monitor and evaluate the long-term incentive compensation levels of its officers and directors. The Compensation Committee believes that a strong stock ownership program is essential to the long-term growth of the Company. In 2005, the Compensation Committee granted to DUSA's key executive officers awards of stock options to emphasize the long-term focus required for success in the pharmaceutical industry.

Compensation of the Chief Executive Officer

The Compensation Committee exercised its subjective judgment and discretion in determining the amounts of Dr. Shulman's base salary, bonus award, and stock option awards for 2005. Dr. Shulman's base salary and cash bonus award for 2005 were determined with reference to the same measures used for all DUSA's executive officers, but with particular emphasis on completion of the merger with Sirius Laboratories, Inc. Dr. Shulman's base salary for 2005 was \$400,000. With regard to a cash bonus award, Dr. Shulman is eligible to receive up to 50% of base salary plus additional amounts for outstanding performance. For 2005, Dr. Shulman's bonus award was 35.5% of his base salary, and was paid to him in 2006. For 2006, the Compensation Committee increased Dr. Shulman's salary to \$416,000.

David M. Bartash
Jay M. Haft, Esq. (Chairman)
Magnus Moliteus

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NASDAQ MARKET INDEX AND HEMSCOTT GROUP INDEX**

ASSUMES \$100 INVESTED ON JAN. 1, 2001

ASSUMES DIVIDEND REINVESTED
FISCAL YEAR ENDING DEC. 31, 2005

	12/29/2000	12/31/2001	12/31/2002	12/31/2003	12/31/2004	12/31/2005
DUSA Pharmaceuticals, Inc.	\$100.00	\$47.88	\$ 9.70	\$30.04	\$85.05	\$ 64.06
Hemscott Group Index - Drug Manufacturers/ Other	100.00	89.00	63.23	87.88	93.19	103.41
NASDAQ Market Index	100.00	79.71	55.60	83.60	90.63	92.62

The graph provided above compares cumulative total shareholder return on the Company's Common Stock for the five-year period ended December 31, 2005, with the cumulative total return on the NASDAQ Market Index and the Hemscott Industry Group 511 - Drug Manufacturers/ Other Index (the Index) (formerly known as the Media General Drug Manufacturer Index) over the same period. The identity of the corporations included in the Index may be obtained by contacting Ms. Shari Lovell, Director of Shareholder Services, DUSA Pharmaceuticals, Inc., 555 Richmond Street West, Suite 300, Toronto, Ontario M5V 3B1 Canada.

The graph assumes \$100 was invested in DUSA's common stock on January 1, 2001, and in each of the indices, and that dividends were reinvested. The comparisons in the graph are required by the Securities and Exchange Commission and are not intended to forecast or be indicative of possible future performance of DUSA's common stock.

Table of Contents**EXECUTIVE OFFICERS WHO ARE NOT DIRECTORS OR NOMINEES**

The name, age, current position and date first elected as an executive officer of the Company of each executive officer who is not a director, or a nominee, of the Company is listed below, followed by summaries of their backgrounds and principal occupations. Executive officers are elected annually, and serve at the discretion of the Board of Directors.

Name	Age	Current Title	Date First Elected as Officer
Mark C. Carota	50	Vice President, Operations	2/18/2000
Richard C. Christopher	36	Vice President, Finance and Chief Financial Officer	1/01/2004
Scott L. Lundahl	47	Vice President, Intellectual Property and Regulatory Affairs	6/23/1999
Stuart L. Marcus, MD, Ph.D.	59	Vice President, Scientific Affairs and Chief Medical Officer	10/11/1993
William F. O Dell	59	Executive Vice President, Sales and Marketing	4/17/2006
Paul A. Sowyrda	44	Vice President, Marketing	8/01/2000

Mark C. Carota has been employed by the Company since October 1999 and has served as our Vice President, Operations since February 2000. Prior to joining the Company, Mr. Carota was Director of Operations from November 1998 to October 1999 for Lavelle, Inc., a privately held manufacturer of orthopedic instrumentation. From July 1998 to November 1998, Mr. Carota was employed as Director of Quality Assurance by CGI Inc. Prior to joining CGI Inc., Mr. Carota was employed by Allergan Inc., from February 1997 to July 1998 where he had responsibility for quality assurance, engineering and facilities.

Richard C. Christopher has been employed by the Company since December 2000 and has served as our Vice President, Finance and CFO since January 2005. Prior to his promotion to his current position in January 2005, he held the positions of Vice President, Financial Planning and Analysis from January 2004 to January 2005 and Director, Financial Analysis from December 2000 to January 2004. Prior to joining the Company, he was the North American Cost Accounting Manager for Grace Construction Products, a unit of W.R. Grace & Co. from April 1999 to December 2000. Prior to joining Grace Construction Products, Mr. Christopher was employed by the Boston Edison Company from March 1996 to April 1999.

Scott L. Lundahl has been employed by the Company since May 1998 and, in addition to his current position, has held the positions of Vice President, Technology and Director of Technology Development. In 1994, Mr. Lundahl co-founded and became Vice President of Lumenetics, Inc., a privately-owned medical device development company, which, prior to May 1998, provided the Company with consulting services in the light device technology area.

Stuart L. Marcus, MD, Ph.D. has been employed by the Company since October 1993. Prior to joining the Company, he was Director of the Hematology/ Oncology Department of Daiichi Pharmaceuticals Inc., and prior thereto he held positions in the Medical Research Division of the American Cyanamid Company, directing photodynamic therapy clinical development, among other assignments.

William F. O Dell has been employed with the Company as our Executive Vice President, Sales and Marketing since April 2006. Prior to joining the Company, Mr. O Dell was Vice President of Marketing and Strategic Business Development at West Pharmaceuticals, Inc. from October 2005 to April 2006. Mr. O Dell also served as Vice

President of Sales and Marketing for the Americas Region from January 2002 to October 2005 and Vice President of Global Marketing from December 1999 to December 2001, at West Pharmaceuticals.

Paul A. Sowyrda, has been employed by the Company since April 2000 and, in addition to his current position, has also held the positions of Vice President, Marketing and Sales and Vice President, Product Development and Marketing. From April 1998 to April 2000, Mr. Sowyrda was employed by Aurora Tech, a Division of Carlo Gavazzi, where at the time of his departure he was serving as President and Chief Executive Officer. From October 1997 to February 1998, Mr. Sowyrda was Vice President, Operations of UroMed Corp, Urovation Division.

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EXECUTIVE COMPENSATION

The following table shows, for the fiscal years ended December 31, 2005, 2004 and 2003, certain compensation paid by DUSA to its five (5) most highly compensated executive officers. All amounts are stated in United States dollars unless otherwise indicated.

Summary Compensation Table

Constitute approval of all awards made under the 2010 Plan without further approval from the shareholders.

Permit the granting of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units, performance awards payable in cash or common stock, and other incentive awards, some of which may require the satisfaction of performance-based criteria.

The 2010 Plan, and all other Company stock based compensation plans, are designed to increase shareholder value by compensating employees over the long term. The plans are used to promote long-term financial success and execution of our business strategy. It is the goal of the Company to attract and retain highly skilled leaders and technical employees, and the use of stock based compensation by the Board of Directors is a critical tool for attracting, motivating and retaining such key employees and directors.

The 2010 Plan is in addition to the Company's existing stock option plans. See the Company's Form 10-K/A filed with the SEC on October 29, 2009 for additional information.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE ASTROTECH CORPORATION 2010 STOCK INCENTIVE PLAN

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DESCRIPTION OF THE 2010 ASTROTECH CORPORATION STOCK INCENTIVE PLAN

This section summarizes the material terms of the 2010 Plan. For additional details regarding the 2010 Plan you should refer to the full text of the 2010 Plan, a copy of which is attached to this proxy statement as Appendix A. This summary is qualified in its entirety by reference to the 2010 Plan.

Administration. The 2010 Plan is administered by the Compensation Committee of the Board of Directors (*Committee*). Members of the Committee must qualify as outside directors under Section 162(m) of the Internal Revenue Code of 1986 and as non-employee directors under Rule 16b-3 promulgated under the Securities Exchange Act of 1934. Subject to the terms of the 2010 Plan, the Committee has the power to select the persons eligible to receive awards under the 2010 Plan, the type and amount of incentive awards to be awarded, and the terms and conditions of such awards. The Committee may delegate its authority under the 2010 Plan described in the preceding sentence to officers of the Company, but may not delegate its authority to grant awards under the 2010 Plan or take any action in contravention of Rule 16b-3 promulgated under the Securities Exchange Act of 1934 or the performance-based compensation exception under Section 162(m) of the Internal Revenue Code. The Committee also has the authority to interpret the 2010 Plan, and to establish, amend or waive rules necessary or appropriate for the administration of the 2010 Plan.

Eligibility. Any employee or consultant of the Company (or its subsidiary) or a director of the Company who, in the opinion of the Committee, is in a position to contribute to the growth, development or financial success of the Company, is eligible to participate in the 2010 Plan. In any calendar year, no covered employee described in Section 162(m) of the Internal Revenue Code may be granted (in the case of stock options and stock appreciation rights), or have vest (in the case of restricted stock or other stock-based awards), awards relating to more than 2,500,000 shares of common stock, and the maximum aggregate cash payout with respect to incentive awards paid in cash to such covered employees may not exceed \$25,000,000.

Shares Subject to the 2010 Plan. The maximum number of shares of the Company's common stock, no par value, that may be delivered pursuant to awards granted under the 2010 Plan is 4,000,000 shares of common stock. Any shares subject to an award under the 2010 Plan that are forfeited or terminated, expire unexercised, lapse or are otherwise cancelled in a manner such that the shares of common stock covered by such award are not issued may again be used for awards under the 2010 Plan. A maximum of 2,000,000 shares of common stock may be issued upon exercise of incentive stock options. The maximum number of shares deliverable pursuant to awards granted under the 2010 Plan is subject to adjustment by the Committee in the event of certain dilutive changes in the number of outstanding shares. Under the 2010 Plan, the Company may issue authorized but unissued shares, treasury shares, or shares purchased by the Company on the open market or otherwise. In addition, the number of shares of common stock available for future awards is reduced by the net number of shares issued pursuant to an award.

Limited Transferability of Awards. Awards granted under the 2010 Plan may not be sold, transferred, pledged or assigned, except by will or the laws of descent and distribution or a qualified domestic relations order. However, the Committee may, in its discretion, authorize in the applicable award agreement the transfer, without consideration, of all or a portion of a nonstatutory stock option for the benefit of immediate family members.

Amendment of the 2010 Plan. The Board of Directors has the power and authority to terminate or amend the 2010 Plan at any time; provided, however, the Board may not, without the approval of shareholders:

other than as a result of a dilutive event, increase the maximum number of shares which may be issued under the 2010 Plan;

amend the requirements as to the class of employees eligible to receive common stock under the 2010 Plan;

extend the term of the 2010 Plan;

increase the maximum limits on awards to covered employees as set for compliance with Section 162(m) of the Internal Revenue Code; or

decrease the authority granted to the Committee under the 2010 Plan in contravention of Rule 16b-3 under the Securities Exchange Act of 1934.

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In addition, to the extent that the Committee determines that the listing requirements of any national securities exchange or quotation system on which the Company's common stock is then listed or quoted, or the Internal Revenue Code or regulations promulgated thereunder, require Shareholder approval in order to maintain compliance with such listing requirements or to maintain any favorable tax advantages, the 2010 Plan will not be amended without approval of the Company's Shareholders. No amendment to the 2010 Plan may adversely affect, in any material way, any rights of a holder of an outstanding award under the 2010 Plan without such holder's consent.

Change in Control. Unless provided otherwise in the applicable award agreement, in the event of a change in control, all outstanding awards shall become 100% vested, free of all restrictions, immediately and fully exercisable, and deemed earned in full and payable as of the day immediately preceding the change in control. A change in control generally means the occurrence of any one or more of the following events:

The acquisition by any individual, entity or group of beneficial ownership of 50% or more of the Company's common stock or combined voting power;

Individuals who constitute the Board of Directors of the Company as of the effective date of the 2010 Plan, or successors to such members approved by the then Board of Directors, cease for any reason to constitute at least a majority of the Board of Directors;

Approval by the Shareholders of the Company of a merger or the sale or other disposition of all or substantially all of the assets of the Company; or

The adoption of any plan or proposal for the liquidation or dissolution of the Company.

Award Agreements and Term. All awards under the 2010 Plan will be authorized by the Committee and evidenced by an award agreement setting forth the type of incentive being granted, the vesting schedule, and other terms and conditions of exercisability. No stock options may be exercisable for more than 10 years from the date of grant, or, in the case of an incentive stock option granted to an employee who owns or is deemed to own more than ten percent of the Company's common stock, five years from the date of grant. In no event may incentive stock options be granted after the expiration of 10 years from the effective date of the 2010 Plan.

Stock Options. A grant of a stock option entitles a participant to purchase from the Company a specified number of shares of common stock at a specified price per share. In the discretion of the Committee, stock options may be granted as non-statutory stock options or incentive stock options, but incentive stock options may only be granted to employees. The exercise price of each stock option is set by the Committee, but all stock options granted under the 2010 Plan must have an exercise price that is equal to or greater than 100% of the market value as of the grant date of the shares covered by the option (except as described in this paragraph). The 2010 Plan does not allow discounted stock options. Thus, an individual would be able to profit from an option only if the fair market value of the Company's common stock increases after the option is granted and vests. An exception may be made only for options that the Company grants to substitute for options held by employees of companies that the Company acquires, in which case the exercise price preserves the economic value of the employee's cancelled stock option from his or her former employer.

An option cannot be exercised until it vests. The Committee establishes the vesting schedule at the time the option is granted. Vesting typically requires continued employment or service by the participant for a period of years. A vested option may be exercised only before it expires.

The aggregate fair market value of the common stock with respect to which incentive stock options become first exercisable by any participant during any calendar year cannot exceed \$100,000. The purchase price per share of common stock which may be purchased under an incentive stock option must be at least equal to the fair market value of the Company's common stock as of the grant date or, if the incentive stock option is granted to an employee who owns or is deemed to own more than 10% of the Company's common stock, 110% of the fair market value of the common stock on the grant date.

The exercise price for shares of common stock acquired on exercise of a stock option must be made in full at the time of the exercise. Payment may be paid in cash, or, if approved by the Committee, delivery of shares of the Company's common stock that have been held by the optionee with a fair market value equal to the exercise price of the stock

option, the withholding of shares that would otherwise be issuable upon exercise, participation in a broker-

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assisted cashless exercise arrangement, or payment of any other form of consideration acceptable to the Committee. **Stock Appreciation Rights (SARs).** SARs are awards that are subject to vesting and payment of an exercise price, which provide a participant the right to receive an amount of money equal to (1) the number of shares exercised, (2) times the amount by which the then-current value of the Company's common stock exceeds the exercise price. The exercise price cannot be less than 100% of the fair market value of the common stock on the date of grant. Thus, an individual would be able to profit from an SAR only if the fair market value of the Company's common stock increases after the SAR is granted and vests. Each SAR is subject to a vesting schedule established by the Committee and expires under the same rules that apply to options.

Restricted Stock. A grant of restricted stock is an award of shares of Company's common stock subject to restrictions or limitations set forth in the 2010 Plan and in the related award agreement. The award agreement for restricted stock will specify the time period during which such award may be subject to forfeiture and any performance goals that must be met to remove any restrictions on such award. Except for limitations on transfer or other limitations set forth in the award agreement, holders of restricted stock have all of the rights of a Shareholder of the Company, including the right to vote the shares, and, if provided in the award agreement, the right to receive any dividends.

Other Awards. The Committee may grant to any participant other forms of awards payable in shares of the Company's common stock or cash. The terms and conditions of such other form of award will be specified in the award agreement. Such awards may be granted for no cash consideration other than services already rendered, or for such other consideration as may be specified by the award agreement.

Performance-Based Awards. Awards may be granted under the 2010 Plan that are subject to the attainment of pre-established performance goals over a specified performance period. Performance-based awards may be payable in stock or cash. Performance shares (also referred to as restricted stock units or stock awards) and performance units result in a payment to the participant in shares or cash, as determined by the Committee, if the performance goals and/or other vesting criteria (for example, continued service with the Company) set by the Committee are satisfied. The award agreement for a performance-based award will specify the performance period, the performance goals to be achieved during the performance period, and the maximum or minimum settlement values. Performance shares and performance units that are settled in shares are very similar to awards of restricted stock, except that in the case of performance shares and performance units, any vested shares are not issued until the payment date specified in the award. In the case of an award of restricted stock, the shares are issued promptly after the grant date but are subject to a vesting schedule.

Termination of Employment, Death, Disability and Retirement. Unless otherwise provided in an award agreement, upon the termination of a participant's employment the non-vested portions of all outstanding awards will terminate immediately. Subject to different provisions which may be specified in any particular award agreement, the period during which vested awards may be exercised following a termination of employment are described below. If a participant's employment is terminated for any reason other than as a result of death, disability, retirement or for cause, the vested portion of such award is exercisable for the lesser of the expiration date set forth in the applicable award agreement or 90 days after the date of termination of employment. In the event of the termination of participant's employment for cause, all vested awards immediately expire. Upon a participant's retirement, any vested award will expire on the earlier of the expiration date set forth in the award agreement for such award or six months after the date of retirement (three months in the case of incentive stock options). Upon the death or disability of a participant, any vested award will expire on the earlier of the expiration date set forth in the award agreement or the one year anniversary date of the participant's death or disability.

Federal Income Tax Consequences

The following is a general summary, as of the date of this proxy statement, of the United States federal income tax consequences associated with the grant of awards under the 2010 Plan. The federal tax laws may change and the federal, state and local tax consequences for any participant will depend upon his or her individual circumstances, thus the tax consequences for any particular individual may be different. Also, this information may not be applicable to any employees of foreign subsidiaries or to participants who are not residents of the United States.

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Nonstatutory Stock Options and Stock Appreciation Rights (SARs). A participant receiving a nonstatutory stock option, or SAR that has been issued with an exercise price not less than the fair market value of the Company's common stock on the grant date, will not recognize income and the Company will not be allowed a deduction at the time such an option is granted. When a participant exercises a nonstatutory stock option or SAR, the difference between the exercise price and any higher market value of the stock on the date of exercise will be ordinary income to the participant and will be claimed as a deduction for federal income tax purposes by the Company. When a participant disposes of shares acquired by the exercise of the option or SAR, any additional gain or loss will be a capital gain or loss.

Incentive Stock Options. Incentive stock options granted under the 2010 Plan are intended to meet the requirements of Section 422 of the Internal Revenue Code. A participant receiving a grant of incentive stock options will not recognize taxable income and the Company will not be allowed a deduction at the time such an option is granted. When a participant exercises an incentive stock option while employed by the Company (or its subsidiary) or within the three-month (one year for disability) period after termination of employment, no ordinary income will be recognized by the participant at that time (and no deduction will be allowed to the Company) but the excess of the fair market value of the shares acquired by such exercise over the exercise price will be taken into account in determining the participant's alternative minimum taxable income for purposes of the federal alternative minimum tax applicable to individuals. If the shares acquired upon exercise are not disposed of until more than two years after the grant date and one year after the date of transfer of the shares to the participant (*i.e.*, the statutory holding periods), the excess of the sale proceeds over the aggregate option price of such shares will be long-term capital gain, and the Company will not be entitled to any federal income tax deduction. Except in the event of death, if the shares are disposed of prior to the expiration of the statutory holding periods (*i.e.*, a Disqualifying Disposition), the excess of the fair market value of such shares at the time of exercise over the exercise price (but not more than the gain on the disposition if it is a transaction on which a loss, if sustained, would be recognized) will be ordinary income at the time of such Disqualifying Disposition (and the Company will be entitled to a federal tax deduction in a like amount), and the balance of any gain will be capital gain. To the extent that the aggregate fair market value of stock (determined on the grant date) with respect to which incentive stock options become exercisable for the first time during any calendar year exceeds \$100,000, such excess options will be treated as nonstatutory stock options.

Payment Using Shares. If a participant pays the exercise price of a nonstatutory or incentive stock option with previously-owned shares of the Company's common stock, and the transaction is not a Disqualifying Disposition of an incentive stock option, the shares received equal to the number of shares surrendered are treated as having been received in a tax-free exchange. The shares received in excess of the number surrendered will not be taxable if an incentive stock option is being exercised, but will be taxable as ordinary income to the extent of their fair market value if a nonstatutory stock option is being exercised. The participant does not recognize income and the Company receives no deduction as a result of the tax-free portion of the exchange transaction.

Restricted Stock, Performance Units and Performance Shares. A recipient of restricted stock, performance units or performance shares will not have taxable income upon grant. Instead, he or she will have ordinary income at the time of vesting equal to the fair market value on the vesting date of the shares (or cash) received minus any amount paid for the shares. For restricted stock only, a recipient may instead elect to be taxed at the time of grant by making an election under Section 83(b) of the Internal Revenue Code. When an award vests or otherwise ceases to be subject to a substantial risk of forfeiture, the excess of the fair market value of the award on the vesting date or the cessation of the substantial risk of forfeiture over the amount paid, if any, by the participant for the award will be ordinary income to the participant and deductible for federal income tax purposes by the Company. Upon disposition of the shares received, the gain or loss recognized by the participant will be treated as capital gain or loss.

Certain Limitations on Deductibility of Executive Compensation. With certain exceptions, Section 162(m) of the Internal Revenue Code denies a deduction to a publicly held corporation for compensation paid to certain executive officers in excess of \$1 million per executive per taxable year (including any deduction with respect to the exercise of a nonstatutory stock option or stock appreciation right, or the disqualifying disposition of stock purchased pursuant to an incentive stock option). One such exception applies to certain performance-based compensation as described in Section 162(m), provided that such compensation has been approved by Shareholders and certain other requirements

are met. If approved by our Shareholders, we believe that the nonstatutory stock options and other

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performance-based awards granted under the 2010 Plan should qualify for the performance-based compensation exception to Section 162(m).

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

Awards granted under the 2010 Plan with a deferral feature will be subject to the requirements of Section 409A. If an award is subject to and fails to satisfy the requirements of Section 409A, the recipient of that award may recognize ordinary income on the amounts deferred under the award, to the extent vested, which may be prior to when the compensation is actually or constructively received. Also, if an award that is subject to Section 409A fails to comply with Section 409A's provisions, Section 409A imposes an additional 20% federal income tax on compensation recognized as ordinary income, as well as interest on such deferred compensation.

ERISA

The Company believes that the 2010 Plan is not subject to any provisions of the Employee Retirement Income Security Act of 1974 (ERISA). The 2010 Plan is not a qualified plan under Section 401(a) of the Internal Revenue Code.

Awards Granted under the 2010 Plan

At January 15, 2010, the Company estimates that approximately 85 officers, employees, consultants and directors were eligible to participate in the 2010 Plan. Because the Committee has the discretion to grant awards under the 2010 Plan, it is not possible as of the date of this proxy statement to determine future awards that will be received by executive officers, employees, consultants and directors under the 2010 Plan.

Securities Authorized for Issuance under Equity Compensation Plans

As of January 15, 2010, the Company had the following securities issuable pursuant to outstanding option award agreements, weighted-average option exercise price, and remaining shares reserved for future issuance under the Company's existing Stock Incentive Plans:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in the first column)
Equity compensation plans approved by security holders	699,160	\$ 1.53	119,931
Equity compensation plans not approved by security holders	0	N/A	0

Total	699,160	\$	1.53	119,931
	23			

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ADDITIONAL INFORMATION

Proxy Solicitation Expense

The cost of the solicitation of proxies will be borne by the Company. In addition to solicitation by mail, directors, officers, and employees of the Company, without receiving any additional compensation, may solicit proxies personally or by telephone or facsimile. The Company has retained Mediant Communications to request brokerage houses, banks, and other custodians or nominees holding stock in their names for others to forward proxy materials to their customers or principals who are the beneficial owners of shares and will reimburse them for their expenses in doing so. The Company does not anticipate that the costs and expenses incurred in connection with this proxy solicitation will exceed those normally expended for a proxy solicitation for those matters to be voted on in the Annual Meeting.

Deadline for Submission of Shareholder Proposals for Next Year's Annual Meeting

The proxy rules adopted by the SEC provide that certain shareholder proposals must be included in the Proxy Statement for the Company's 2010 Annual Meeting. For a proposal to be considered for inclusion in the Company's proxy materials for the Company's 2010 Annual Meeting of Shareholders, it must be received in writing by the Company on or before November 5, 2010 at its principal office, 401 Congress Ave, Suite 1650, Austin, Texas, 78701, Attention: Secretary. If the Company receives notice of a shareholder's intent to present a proposal at the Company's 2010 Annual Meeting after November 5, 2010, the Company will have the right to exercise discretionary voting authority with respect to such proposal, if presented at the meeting, without including information regarding such proposal in the Company's proxy materials. Shareholders who wish to submit a proposal at next year's Annual Meeting must submit notice of the proposal, in writing, to the Company at the address set forth above. Notwithstanding the foregoing, in the event that the Company changes the 2010 Annual Meeting more than 30 days from the date of this year's Annual Meeting, the Company will provide the deadline for submissions of shareholder proposals in an annual, quarterly or current report, so as to provide notice of such submission deadline to shareholders, which shall be a reasonable time before the Company begins to print and send its proxy materials.

Discretionary Voting of Proxies on Other Matters

The Board of Directors for the Company knows of no matters to be presented at the Annual Meeting other than those described in this Proxy Statement. In the event that other business properly comes before the meeting, the persons named as proxies will have discretionary authority to vote the shares represented by the accompanying proxy in accordance with their own judgment.

Incorporation by Reference

The Company's director and officer compensation information required pursuant to Item 8 of the SEC's proxy rules is incorporated herein by reference to the Company's Form 10K/A filed with the SEC on October 29, 2009. The information that is incorporated by reference is available to the public over the Internet at the SEC's web site at <http://www.sec.gov>.

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OTHER MATTERS

We do not intend to bring any other matters before the Annual Meeting, nor are we aware of any other matters that are to be properly presented to the Annual Meeting by others. In the event that other matters do properly come before the Annual Meeting or any adjournments thereof, it is the intention of the persons named in the Proxy to vote such Proxy in accordance with their best judgment on such matters.

The Company's Annual Report on Form 10-K, as amended, including the Company's audited financial statements for the year ended June 30, 2009 is being mailed herewith to all shareholders of record as of the record date.

By Order of the Board of Directors,

John M. Porter

Senior Vice President and

Chief Financial Officer and

Secretary

Austin, Texas

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APPENDIX A

**ASTROTECH CORPORATION
2010 STOCK INCENTIVE PLAN
(As Effective March 5, 2010)**

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ASTROTECH CORPORATION
2010 STOCK INCENTIVE PLAN
SECTION 1.
GENERAL PROVISIONS RELATING TO
PLAN GOVERNANCE, COVERAGE AND BENEFITS

1.1 Background and Purpose

Astrotech Corporation., a Washington corporation (the **Company**), has adopted this plan document, entitled Astrotech Corporation 2010 Stock Incentive Plan (the **Plan**), effective as of March 5, 2010 (the **Effective Date**).

The purpose of the Plan is to foster and promote the long-term financial success of the Company and to increase stockholder value by: (a) encouraging the commitment of selected key Employees, Consultants and Outside Directors, (b) motivating superior performance of key Employees, Consultants and Outside Directors by means of long-term performance related incentives, (c) encouraging and providing key Employees, Consultants and Outside Directors with a program for obtaining ownership interests in the Company which link and align their personal interests to those of the Company's stockholders, (d) attracting and retaining key Employees, Consultants and Outside Directors by providing competitive compensation opportunities, and (e) enabling key Employees, Consultants and Outside Directors to share in the long-term growth and success of the Company.

The Plan provides for payment of various forms of compensation. It is not intended to be a plan that is subject to the Employee Retirement Income Security Act of 1974, as amended (**ERISA**). The Plan will be interpreted, construed and administered consistent with its status as a plan that is not subject to ERISA.

The Plan will remain in effect, subject to the right of the Board to amend or terminate the Plan at any time pursuant to Section 7.7, until all Shares subject to the Plan have been purchased or acquired according to its provisions. However, in no event may an Incentive Stock Option be granted under the Plan after the expiration of ten (10) years from the Effective Date to the extent required by Code Section 422(b)(2).

1.2 Definitions

The following terms shall have the meanings set forth below:

(a) Authorized Officer. The Chairman of the Board, the CEO or any other senior officer of the Company to whom either of them delegate the authority to execute any Incentive Agreement for and on behalf of the Company. No officer or director shall be an Authorized Officer with respect to any Incentive Agreement for himself.

(b) Board. The then-current Board of Directors of the Company.

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(c) Cause. When used in connection with the termination of a Grantee's Employment, shall mean the termination of the Grantee's Employment by the Company or any Subsidiary by reason of (i) the conviction of the Grantee by a court of competent jurisdiction as to which no further appeal can be taken of a crime involving moral turpitude or a felony; (ii) the commission by the Grantee of a material act of fraud upon the Company or any Subsidiary, or any customer or supplier thereof; (iii) the misappropriation of any funds or property of the Company or any Subsidiary, or any customer or supplier thereof; (iv) the willful and continued failure by the Grantee to perform the material duties assigned to him that is not cured to the reasonable satisfaction of the Company within 30 days after written notice of such failure is provided to Grantee by the Board or CEO (or by another officer of the Company or a Subsidiary who has been designated by the Board or CEO for such purpose); (v) the engagement by the Grantee in any direct and material conflict of interest with the Company or any Subsidiary without compliance with the Company's or Subsidiary's conflict of interest policy, if any, then in effect; or (vi) the engagement by the Grantee, without the written approval of the Board or CEO, in any material activity which competes with the business of the Company or any Subsidiary or which would result in a material injury to the business, reputation or goodwill of the Company or any Subsidiary.

(d) CEO. The then-current Chief Executive Officer of the Company.

(e) Change in Control. Any of the events described in and subject to Section 6.8.

(f) Code. The Internal Revenue Code of 1986, as amended, and the regulations and other authority promulgated thereunder by the appropriate governmental authority. References herein to any provision of the Code shall refer to any successor provision thereto.

(g) Committee. The committee appointed by the Board to administer the Plan. If the Company is a Publicly Held Corporation, the Plan shall be administered by the Committee appointed by the Board consisting of not less than two directors who fulfill the nonemployee director requirements of Rule 16b-3 under the Exchange Act and the outside director requirements of Code Section 162(m). In either case, the Committee may be the Compensation Committee of the Board, or any subcommittee of the Compensation Committee, provided that the members of the Committee satisfy the requirements of the previous provisions of this paragraph.

The Board shall have the power to fill vacancies on the Committee arising by resignation, death, removal or otherwise. The Board, in its sole discretion, may bifurcate the powers and duties of the Committee among one or more separate committees, or retain all powers and duties of the Committee in a single Committee. The members of the Committee shall serve at the discretion of the Board.

Notwithstanding the preceding paragraphs of this Section 1.2(g), the term Committee as used in the Plan with respect to any Incentive Award for an Outside Director shall refer to the entire Board. In the case of an Incentive Award for an Outside

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Director, the Board shall have all the powers and responsibilities of the Committee hereunder as to such Incentive Award, and any actions as to such Incentive Award may be acted upon only by the Board (unless it otherwise designates in its discretion). When the Board exercises its authority to act in the capacity as the Committee hereunder with respect to an Incentive Award for an Outside Director, it shall so designate with respect to any action that it undertakes in its capacity as the Committee.

(h) Common Stock. The common stock of the Company, no par value, and any class of common stock into which such common shares may hereafter be converted, reclassified or recapitalized.

(i) Company. Astrotech Corporation, a corporation organized under the laws of the State of Washington, and any successor in interest thereto.

(j) Consultant. An independent agent, consultant, attorney, an individual who has agreed to become an Employee within the next six months, or any other individual who is not an Outside Director or an Employee and who, in the opinion of the Committee, is (i) in a position to contribute to the growth or financial success of the Company (or any Parent or Subsidiary), (ii) is a natural person and (iii) provides *bona fide* services to the Company (or any Parent or Subsidiary), which services are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the Company's securities.

(k) Covered Employee. A named executive officer who is one of the group of covered employees, as defined in Code Section 162(m) and Treasury Regulation Section 1.162-27(c) (or its successor), during any period that the Company is a Publicly Held Corporation.

(l) Disability. As determined by the Committee in its discretion exercised in good faith, a physical or mental condition of the Grantee that would entitle him to payment of disability income payments under the Company's long term disability insurance policy or plan for employees, as then effective, if any; or in the event that the Grantee is not covered, for whatever reason, under the Company's long-term disability insurance policy or plan, Disability means a permanent and total disability as defined in Code Section 22(e)(3). A determination of Disability may be made by a physician selected or approved by the Committee and, in this respect, the Grantee shall submit to any reasonable examination(s) required in the opinion of such physician.

(m) Employee. Any employee of the Company (or any Parent or Subsidiary) within the meaning of Code Section 3401(c) including, without limitation, officers who are members of the Board.

(n) Employment. Employment means that the individual is employed as an Employee, or engaged as a Consultant or Outside Director, by the Company (or any Parent or Subsidiary), or by any corporation issuing or assuming an Incentive Award in any transaction described in Code Section 424(a), or by a parent corporation or a subsidiary corporation of such corporation issuing or assuming such Incentive Award, as

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the parent-subsidary relationship shall be determined at the time of the corporate action described in Code Section 424(a). In this regard, neither the transfer of a Grantee from Employment by the Company to Employment by any Parent or Subsidiary, nor the transfer of a Grantee from Employment by any Parent or Subsidiary to Employment by the Company, shall be deemed to be a termination of Employment of the Grantee. Moreover, the Employment of a Grantee shall not be deemed to have been terminated because of an approved leave of absence from active Employment on account of temporary illness, authorized vacation or granted for reasons of professional advancement, education, or health, or during any period required to be treated as a leave of absence by virtue of any applicable statute, Company personnel policy or written agreement.

The term Employment for purposes of the Plan shall include (i) active performance of agreed services by a Consultant for the Company (or any Parent or Subsidiary) or (ii) current membership on the Board by an Outside Director.

All determinations hereunder regarding Employment, and termination of Employment, shall be made by the Committee in its discretion.

(o) Exchange Act. The Securities Exchange Act of 1934, as amended.

(p) Fair Market Value. If the Company is a Publicly Held Corporation, the Fair Market Value of one Share on the date in question shall be (i) the closing sales price on such day for a Share as quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ) or the national securities exchange on which Shares are then principally listed or admitted to trading, or (ii) if not quoted on NASDAQ or other national securities exchange, the average of the closing bid and asked prices for a Share as quoted by the National Quotation Bureau s Pink Sheets or the National Association of Securities Dealers OTC Bulletin Board System. If there was no public trade of Common Stock on the date in question, Fair Market Value shall be determined by reference to the last preceding date on which such a trade was so reported.

If the Company is not a Publicly Held Corporation at the time a determination of the Fair Market Value of the Common Stock is required to be made hereunder, the determination of Fair Market Value for purposes of the Plan shall be made by the Committee in its discretion. In this respect, the Committee may rely on such financial data, appraisals, valuations, experts, and other sources as, in its sole and absolute discretion, it deems advisable under the circumstances. With respect to Stock Options, SARs, and other Incentive Awards subject to Code Section 409A, such Fair Market Value shall be determined by the Committee consistent with the requirements of Section 409A in order to satisfy the exception under Section 409A for stock rights.

(q) Grantee. Any Employee, Consultant or Outside Director who is granted an Incentive Award under the Plan.

(r) Immediate Family. With respect to a Grantee, the Grantee s child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling,

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mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships.

(s) Incentive Agreement. The written agreement entered into between the Company and the Grantee setting forth the terms and conditions pursuant to which an Incentive Award is granted under the Plan, as such agreement is further defined in Section 6.1.

(t) Incentive Award. A grant of an award under the Plan to a Grantee, including any Nonstatutory Stock Option, Incentive Stock Option (ISO), Stock Appreciation Right (SAR), Restricted Stock Award, Restricted Stock Unit or Other Stock-Based Award, as well as any Supplemental Payment with respect thereto.

(u) Incentive Stock Option or ISO. A Stock Option granted by the Committee to an Employee under Section 2 which is designated by the Committee as an Incentive Stock Option and intended to qualify as an Incentive Stock Option under Code Section 422.

(v) Insider. If the Company is a Publicly Held Corporation, an individual who is, on the relevant date, an officer, director or ten percent (10%) beneficial owner of any class of the Company's equity securities that is registered pursuant to Section 12 of the Exchange Act, all as defined under Section 16 of the Exchange Act.

(w) Nonstatutory Stock Option. A Stock Option granted by the Committee to a Grantee under Section 2 that is not designated by the Committee as an Incentive Stock Option.

(x) Option Price. The exercise price at which a Share may be purchased by the Grantee of a Stock Option.

(y) Other Stock-Based Award. An award granted by the Committee to a Grantee under Section 4.1 that is valued in whole or in part by reference to, or is otherwise based upon, Common Stock.

(z) Outside Director. A member of the Board who is not, at the time of grant of an Incentive Award, an employee of the Company or any Parent or Subsidiary.

(aa) Parent. Any corporation (whether now or hereafter existing) which constitutes a parent of the Company, as defined in Code Section 424(e).

(bb) Performance-Based Award. A grant of an Incentive Award under the Plan pursuant to Section 5 that is intended to satisfy the Performance-Based Exception.

(cc) Performance-Based Exception. The performance-based exception from the tax deductibility limitations of Code Section 162(m), as prescribed in Code Section 162(m) and Treasury Regulation Section 1.162-27(e) (or its successor), which is applicable during such period that the Company is a Publicly Held Corporation.

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(dd) Performance Criteria. The business criteria that are specified by the Committee pursuant to Section 5 for an Incentive Award that is intended to qualify for the Performance-Based Exception; the satisfaction of such business criteria during the Performance Period being required for the grant and/or vesting of the particular Incentive Award to occur, as specified in the particular Incentive Agreement.

(ee) Performance Period. A period of time determined by the Committee over which performance is measured for the purpose of determining a Grantee's right to, and the payment value of, any Incentive Award that is intended to qualify for the Performance-Based Exception.

(ff) Plan. Astrotech Corporation 2019 Stock Incentive Plan, as effective on the Effective Date, which is set forth herein and as it may be amended from time to time.

(gg) Plan Year. The calendar year.

(hh) Publicly Held Corporation. A corporation issuing any class of common equity securities required to be registered under Section 12 of the Exchange Act.

(ii) Restricted Stock. Common Stock that is issued or transferred to a Grantee pursuant to Section 3.

(jj) Restricted Stock Award. An authorization by the Committee to issue or transfer Restricted Stock to a Grantee pursuant to Section 3.

(kk) Restricted Stock Unit. A unit granted to a Grantee pursuant to Section 4.1 which entitles him to receive a Share or cash on the vesting date, as specified in the Incentive Agreement.

(ll) Restriction Period. The period of time determined by the Committee and set forth in the Incentive Agreement during which the transfer of Restricted Stock by the Grantee is restricted.

(mm) Retirement. The voluntary termination of Employment from the Company or any Parent or Subsidiary constituting retirement for age on any date after the Employee attains the normal retirement age of 65 years, or such other age as may be designated by the Committee in the Employee's Incentive Agreement.

(nn) Share. A share of the Common Stock of the Company.

(oo) Share Pool. The number of shares authorized for issuance under Section 1.4, as adjusted for (i) awards and payouts under Section 1.5 and (ii) changes and adjustments as described in Section 6.6.

(pp) Spread. The difference between the exercise price per Share specified in a SAR grant and the Fair Market Value of a Share on the date of exercise of the SAR.

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(qq) Stock Appreciation Right or SAR. A Stock Appreciation Right as described in Section 2.5.

(rr) Stock Option or Option. Pursuant to Section 2, (i) an Incentive Stock Option granted to an Employee, or (ii) a Nonstatutory Stock Option granted to an Employee, Consultant or Outside Director, whereunder such option the Grantee has the right to purchase Shares of Common Stock. In accordance with Code Section 422, only an Employee may be granted an Incentive Stock Option.

(ss) Subsidiary. Any company (whether a corporation, partnership, joint venture or other form of entity) in which the Company or a corporation in which the Company owns a majority of the shares of capital stock, directly or indirectly, owns a greater than 50% equity interest except that, with respect to the issuance of Incentive Stock Options, the term Subsidiary shall have the same meaning as the term subsidiary corporation as defined in Code Section 424(f) as required by Code Section 422.

(tt) Supplemental Payment. Any amount, as described in Sections 2.4, 3.4 and/or 4.3, that is dedicated to payment of income taxes which are payable by the Grantee resulting from an Incentive Award.

1.3 Plan Administration

(a) Authority of the Committee. Except as may be limited by law and subject to the provisions herein, the Committee shall have the complete power and authority to (i) select Grantees who shall participate in the Plan; (ii) determine the sizes, duration and types of Incentive Awards; (iii) determine the terms and conditions of Incentive Awards and Incentive Agreements; (iv) determine whether any Shares subject to Incentive Awards will be subject to any restrictions on transfer; (v) construe and interpret the Plan and any Incentive Agreement or other agreement entered into under the Plan; and (vi) establish, amend, or waive rules for the Plan's administration. Further, the Committee shall make all other determinations which may be necessary or advisable for the administration of the Plan.

(b) Meetings. The Committee shall designate a chairman from among its members who shall preside at its meetings, and shall designate a secretary, without regard to whether that person is a member of the Committee, who shall keep the minutes of the proceedings and all records, documents, and data pertaining to its administration of the Plan. Meetings shall be held at such times and places as shall be determined by the Committee and the Committee may hold telephonic meetings. The Committee may take any action otherwise proper under the Plan by the affirmative vote, taken with or without a meeting, of a majority of its members. The Committee may authorize any one or more of its members or any officer of the Company to execute and deliver documents on behalf of the Committee.

(c) Decisions Binding. All determinations and decisions of the Committee shall be made in its discretion pursuant to the provisions of the Plan, and shall be final,

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conclusive and binding on all persons including the Company, its shareholders, Employees, Grantees, and their estates and beneficiaries. The Committee's decisions and determinations with respect to any Incentive Award need not be uniform and may be made selectively among Incentive Awards and Grantees, whether or not such Incentive Awards are similar or such Grantees are similarly situated.

(d) Modification of Outstanding Incentive Awards. Subject to the shareholder approval requirements of Section 7.7 if applicable, the Committee may, in its discretion, provide for the extension of the exercisability of an Incentive Award, accelerate the vesting or exercisability of an Incentive Award, eliminate or make less restrictive any restrictions contained in an Incentive Award, waive any restriction or other provisions of an Incentive Award, or otherwise amend or modify an Incentive Award in any manner that (i) is not adverse to the Grantee to whom such Incentive Award was granted, (ii) is consented to by such Grantee, (iii) does not cause the Incentive Award to provide for the deferral of compensation in a manner that does not comply with Code Section 409A or is not exempt from Section 409A (unless otherwise determined by the Committee), or (iv) does not contravene the requirements of the Performance-Based Exception under Code Section 162(m), if applicable. With respect to an Incentive Award that is an ISO, no adjustment thereto shall be made to the extent constituting a modification within the meaning of Code Section 424(h)(3) unless otherwise agreed to by the Grantee in writing. Notwithstanding the above provisions of this subsection, no amendment or modification of an Incentive Award shall be made to the extent such modification results in any Stock Option with an exercise price less than 100% of the Fair Market Value per Share on the date of grant (110% for Grantees of ISOs who are 10% or greater shareholders pursuant to Section 1.7(b)).

(e) Delegation of Authority. The Committee may delegate to designated officers or other employees of the Company any of its duties and authority under the Plan pursuant to such conditions or limitations as the Committee may establish from time to time, including, without limitation, the authority to recommend Grantees and the forms and terms of their Incentive Awards; provided, however, the Committee may not delegate to any person the authority (i) to grant Incentive Awards or (ii) if the Company is a Publicly Held Corporation, to take any action which would contravene the requirements of Rule 16b-3 under the Exchange Act, the Performance-Based Exception under Code Section 162(m), or the Sarbanes-Oxley Act of 2002.

(f) Expenses of Committee. The Committee may employ legal counsel, including, without limitation, independent legal counsel and counsel regularly employed by the Company, and other agents as the Committee may deem appropriate for the administration of the Plan. The Committee may rely upon any opinion or computation received from any such counsel or agent. All expenses incurred by the Committee in interpreting and administering the Plan, including, without limitation, meeting expenses and professional fees, shall be paid by the Company.

(g) Surrender of Previous Incentive Awards. The Committee may, in its discretion, grant Incentive Awards to Grantees on the condition that such Grantees surrender to the Committee for cancellation such other Incentive Awards (including,

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without limitation, Incentive Awards with higher exercise prices) as the Committee directs. Incentive Awards granted on the condition precedent of surrender of outstanding Incentive Awards shall not count against the limits set forth in Section 1.4 until such time as such previous Incentive Awards are surrendered and cancelled. No surrender of Incentive Awards shall be made under this Section 1.3(g) if such surrender causes any Incentive Award to provide for the deferral of compensation in a manner that is subject to taxation under Code Section 409A (unless otherwise determined by the Committee).

(h) Indemnification. Each person who is or was a member of the Committee shall be indemnified by the Company against and from any damage, loss, liability, cost and expense that may be imposed upon or reasonably incurred by him in connection with or resulting from any claim, action, suit, or proceeding to which he may be a party or in which he may be involved by reason of any action taken or failure to act under the Plan, except for any such act or omission constituting willful misconduct or gross negligence. Each such person shall be indemnified by the Company for all amounts paid by him in settlement thereof, with the Company's approval, or paid by him in satisfaction of any judgment in any such action, suit, or proceeding against him, provided he shall give the Company an opportunity, at its own expense, to handle and defend the same before he undertakes to handle and defend it on his own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled (i) under the Company's Articles or Certificate of Incorporation or Bylaws, (ii) pursuant to any separate indemnification or hold harmless agreement with the Company, (iii) as a matter of law, contract or otherwise, or (iv) any power that the Company may have to indemnify them or hold them harmless.

1.4 Shares of Common Stock Available for Incentive Awards

Subject to adjustment under Section 6.6, there shall be available for Incentive Awards that are granted wholly or partly in Common Stock (including rights or Stock Options that may be exercised for or settled in Common Stock) Four Million (4,000,000) Shares of Common Stock. Pursuant to Section 1.5, the number of Shares that are the subject of Incentive Awards under this Plan, which are forfeited or terminated, expire unexercised, are settled in cash in lieu of Common Stock or in a manner such that all or some of the Shares covered by an Incentive Award are not issued to a Grantee or are exchanged for Incentive Awards that do not involve Common Stock, shall again immediately become available for Incentive Awards hereunder. The aggregate number of Shares which may be issued upon exercise of ISOs shall be Two Million (2,000,000) of the Shares reserved pursuant to the first sentence of this paragraph. For purposes of counting Shares against the ISO maximum number of reserved Shares, the net number of Shares issued pursuant to the exercise of an ISO shall be counted. The Committee may from time to time adopt and observe such procedures concerning the counting of Shares against the Plan maximum as it may deem appropriate.

During any period that the Company is a Publicly Held Corporation, then unless the Committee determines that a particular Incentive Award granted to a Covered Employee is not intended to comply with the Performance-Based Exception, the following rules shall apply to grants of Incentive Awards to Covered Employees:

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(a) Subject to adjustment as provided in Section 6.6, the maximum aggregate number of Shares of Common Stock attributable to Incentive Awards paid out in Shares that may be granted (in the case of Stock Options and SARs) or that may vest (in the case of Restricted Stock, Restricted Stock Units or Other Stock-Based Awards), as applicable, in any calendar year pursuant to any Incentive Award held by any individual Covered Employee shall be Two Million and Five Hundred Thousand (2,500,000) Shares.

(b) The maximum aggregate cash payout (with respect to any Incentive Awards paid out in cash) in any calendar year which may be made to any Covered Employee shall be twenty-five million dollars (\$25,000,000).

(c) With respect to any Stock Option or SAR granted to a Covered Employee that is canceled or repriced, the number of Shares subject to such Stock Option or SAR shall continue to count against the maximum number of Shares that may be the subject of Stock Options or SARs granted to such Covered Employee hereunder and, in this regard, such maximum number shall be determined in accordance with Code Section 162(m).

(d) The limitations of subsections (a), (b) and (c) above shall be construed and administered so as to comply with the Performance-Based Exception.

1.5 Share Pool Adjustments for Awards and Payouts

The following Incentive Awards shall reduce, on a one Share for one Share basis, the number of Shares authorized for issuance under the Share Pool:

- (a) Stock Option;
- (b) SAR;
- (c) Restricted Stock Award; and
- (d) A Restricted Stock Unit or Other Stock-Based Award in Shares.

The following transactions shall restore, on a one Share for one Share basis, the number of Shares authorized for issuance under the Share Pool:

(e) A payout of a Restricted Stock Award, Restricted Stock Unit, SAR, or Other Stock-Based Award in the form of cash and not Shares (but not the cashless exercise of a Stock Option with a broker, as provided in Section 2.3(a));

(f) A cancellation, termination, expiration, forfeiture, or lapse for any reason of any Shares subject to an Incentive Award; and

(g) Payment of an Option Price by withholding Shares which otherwise would be acquired on exercise (*i.e.*, the Share Pool shall be increased by the number of Shares withheld in payment of the Option Price).

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1.6 Common Stock Available

The Common Stock available for issuance or transfer under the Plan shall be made available from Shares now or hereafter (a) held in the treasury of the Company, (b) authorized but unissued shares, or (c) Shares to be purchased or acquired by the Company. No fractional shares shall be issued under the Plan; payment for fractional shares shall be made in cash.

1.7 Participation

(a) Eligibility. The Committee shall from time to time designate those Employees, Consultants and/or Outside Directors, if any, to be granted Incentive Awards under the Plan, the type of Incentive Awards granted, the number of Shares, Stock Options, rights or units, as the case may be, which shall be granted to each such person, and any other terms or conditions relating to the Incentive Awards as it may deem appropriate to the extent consistent with the provisions of the Plan. A Grantee who has been granted an Incentive Award may, if otherwise eligible, be granted additional Incentive Awards at any time.

(b) Incentive Stock Option Eligibility. No Consultant or Outside Director shall be eligible for the grant of any Incentive Stock Option. In addition, no Employee shall be eligible for the grant of any Incentive Stock Option who owns or would own immediately before the grant of such Incentive Stock Option, directly or indirectly, stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, or any Parent or Subsidiary. This restriction does not apply if, at the time such Incentive Stock Option is granted, the Incentive Stock Option exercise price is at least one hundred and ten percent (110%) of the Fair Market Value on the date of grant and the Incentive Stock Option by its terms is not exercisable after the expiration of five (5) years from the date of grant. For the purpose of the immediately preceding sentence, the attribution rules of Code Section 424(d) shall apply for the purpose of determining an Employee's percentage ownership in the Company or any Parent or Subsidiary. This paragraph shall be construed consistent with the requirements of Code Section 422.

1.8 Types of Incentive Awards

The types of Incentive Awards under the Plan are Stock Options, Stock Appreciation Rights and Supplemental Payments as described in Section 2, Restricted Stock Awards and Supplemental Payments as described in Section 3, Restricted Stock Units and Other Stock-Based Awards and Supplemental Payments as described in Section 4, or any combination of the foregoing.

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SECTION 2.
STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

2.1 Grant of Stock Options

The Committee is authorized to grant (a) Nonstatutory Stock Options to Employees, Consultants and/or Outside Directors and (b) Incentive Stock Options to Employees only, in accordance with the terms and conditions of the Plan, and with such additional terms and conditions, not inconsistent with the Plan, as the Committee shall determine in its discretion. Successive grants may be made to the same Grantee regardless whether any Stock Option previously granted to such person remains unexercised.

2.2 Stock Option Terms

(a) Written Agreement. Each grant of a Stock Option shall be evidenced by a written Incentive Agreement. Among its other provisions, each Incentive Agreement shall set forth the extent to which the Grantee shall have the right to exercise the Stock Option following termination of the Grantee's Employment. Such provisions shall be determined in the discretion of the Committee, shall be included in the Grantee's Incentive Agreement, and need not be uniform among all Stock Options issued pursuant to the Plan.

(b) Number of Shares. Each Stock Option shall specify the number of Shares of Common Stock to which it pertains.

(c) Exercise Price. The exercise price per Share of Common Stock under each Stock Option shall be (i) not less than 100% of the Fair Market Value per Share on the date the Stock Option is granted and (ii) specified in the Incentive Agreement; provided, however, if the Grantee of an ISO is a 10% or greater shareholder pursuant to Section 1.7(b), the exercise price for the ISO shall not be less than 110% of the Fair Market Value on the date of grant. Each Stock Option shall specify the method of exercise which shall be consistent with Section 2.3(a).

(d) Term. In the Incentive Agreement, the Committee shall fix the term of each Stock Option which shall not be more than (i) ten (10) years from the date of grant, or (ii) five (5) years from the date of grant for an ISO granted to 10% or greater shareholder pursuant to Section 1.7(b).

(e) Exercise. The Committee shall determine the time or times at which a Stock Option may be exercised, in whole or in part. Each Stock Option may specify the required period of continuous Employment and/or the Performance Criteria to be achieved before the Stock Option or portion thereof will become exercisable. Each Stock Option, the exercise of which, or the timing of the exercise of which, is dependent, in whole or in part, on the achievement of designated Performance Criteria, may specify a minimum level of achievement in respect of the specified Performance Criteria below which no Stock Options will be exercisable and a method for determining the number of Stock Options that will be exercisable if performance is at or above such minimum but

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short of full achievement of the Performance Criteria. All such terms and conditions shall be set forth in the Incentive Agreement.

(f) \$100,000 Annual Limit on Incentive Stock Options. Notwithstanding any contrary provision in the Plan, a Stock Option designated as an ISO shall be an ISO only to the extent that the aggregate Fair Market Value (determined as of the time the ISO is granted) of the Shares of Common Stock with respect to which ISOs are exercisable for the first time by the Grantee during any single calendar year (under the Plan and any other stock option plans of the Company and its Subsidiaries or Parent) does not exceed \$100,000. This limitation shall be applied by taking ISOs into account in the order in which they were granted and shall be construed in accordance with Section 422(d) of the Code. To the extent that a Stock Option intended to constitute an ISO exceeds the \$100,000 limitation (or any other limitation under Code Section 422), the portion of the Stock Option that exceeds the \$100,000 limitation (or violates any other limitation under Code Section 422) shall be deemed a Nonstatutory Stock Option. In such event, all other terms and provisions of such Stock Option grant shall remain unchanged.

2.3 Stock Option Exercises

(a) Method of Exercise and Payment. Stock Options shall be exercised by the delivery of a signed written notice of exercise to the Company, which must be received as of a date set by the Company in advance of the effective date of the proposed exercise. The notice shall set forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares.

The Option Price upon exercise of any Stock Option shall be payable to the Company in full either: (i) in cash or its equivalent; or (ii) subject to prior approval by the Committee in its discretion, by tendering previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the Option Price, (iii) subject to prior approval by the Committee in its discretion, by withholding Shares which otherwise would be acquired on exercise having an aggregate Fair Market Value at the time of exercise equal to the total Option Price; or (iv) subject to prior approval by the Committee in its discretion, by a combination of (i), (ii), and (iii) above.

Any payment in Shares shall be effected by the surrender of such Shares to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Stock Option is exercised. Unless otherwise permitted by the Committee in its discretion, the Grantee shall not surrender, or attest to the ownership of, Shares in payment of the Option Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Stock Option for financial accounting reporting purposes.

The Committee, in its discretion, also may allow the Option Price to be paid with such other consideration as shall constitute lawful consideration for the issuance of Shares (including, without limitation, effecting a cashless exercise with a broker of the Option), subject to applicable securities law restrictions and tax withholdings, or by any

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other means which the Committee determines to be consistent with the Plan's purpose and applicable law. At the direction of the Grantee, the broker will either (i) sell all of the Shares received when the Option is exercised and pay the Grantee the proceeds of the sale (minus the Option Price, withholding taxes and any fees due to the broker); or (ii) sell enough of the Shares received upon exercise of the Option to cover the Option Price, withholding taxes and any fees due the broker and deliver to the Grantee (either directly or through the Company) a stock certificate for the remaining Shares. Dispositions to a broker effecting a cashless exercise are not exempt under Section 16 of the Exchange Act if the Company is a Publicly Held Corporation. Moreover, in no event will the Committee allow the Option Price to be paid with a form of consideration, including a loan or a cashless exercise, if such form of consideration would violate the Sarbanes-Oxley Act of 2002 as determined by the Committee.

As soon as practicable after receipt of a written notification of exercise and full payment, the Company shall deliver, or cause to be delivered, to or on behalf of the Grantee, in the name of the Grantee or other appropriate recipient, evidence of ownership for the number of Shares purchased under the Stock Option.

Subject to Section 6.4, during the lifetime of a Grantee, each Option granted to the Grantee shall be exercisable only by the Grantee (or his legal guardian in the event of his Disability) or by a broker-dealer acting on his behalf pursuant to a cashless exercise under the foregoing provisions of this Section 2.3(a).

(b) Restrictions on Share Transferability. The Committee may impose such restrictions on any grant of Stock Options or on any Shares acquired pursuant to the exercise of a Stock Option as it may deem advisable, including, without limitation, restrictions under (i) any shareholders' agreement, buy/sell agreement, right of first refusal, non-competition, and any other agreement between the Company and any of its securities holders or employees; (ii) any applicable federal securities laws; (iii) the requirements of any stock exchange or market upon which such Shares are then listed and/or traded; or (iv) any blue sky or state securities law applicable to such Shares. Any certificate issued to evidence Shares issued upon the exercise of an Incentive Award may bear such legends and statements as the Committee shall deem advisable to assure compliance with applicable federal and state laws and regulations.

Any Grantee or other person exercising an Incentive Award shall be required, if requested by the Committee, to give a written representation that the Incentive Award and the Shares subject to the Incentive Award will be acquired for investment and not with a view to public distribution; provided, however, that the Committee, in its discretion, may release any person receiving an Incentive Award from any such representations either prior to or subsequent to the exercise of the Incentive Award.

(c) Notification of Disqualifying Disposition of Shares from Incentive Stock Options. Notwithstanding any other provision of the Plan, a Grantee who disposes of Shares of Common Stock acquired upon the exercise of an Incentive Stock Option by a sale or exchange either (i) within two (2) years after the date of the grant of the Incentive Stock Option under which the Shares were acquired or (ii) within one (1) year after the

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transfer of such Shares to him pursuant to exercise, shall promptly notify the Company of such disposition, the amount realized and his adjusted basis in such Shares.

(d) Proceeds of Option Exercise. The proceeds received by the Company from the sale of Shares pursuant to Stock Options exercised under the Plan shall be used for general corporate purposes.

2.4 Supplemental Payment on Exercise of Nonstatutory Stock Options

The Committee, either at the time of grant or exercise of any Nonstatutory Stock Option, may provide in the Incentive Agreement for a Supplemental Payment by the Company to the Grantee with respect to the exercise of any Nonstatutory Stock Option. The Supplemental Payment shall be in the amount specified by the Committee, which amount shall not exceed the amount necessary to pay the federal and state income tax payable with respect to both the exercise of the Nonstatutory Stock Option and the receipt of the Supplemental Payment, assuming the holder is taxed at either the maximum effective income tax rate applicable thereto or at a lower tax rate as deemed appropriate by the Committee in its discretion. No Supplemental Payments will be made with respect to any SARs or ISOs.

2.5 Stock Appreciation Rights

(a) Grant. The Committee may grant Stock Appreciation Rights to any Employee, Consultant or Outside Director. Any SARs granted under the Plan are intended to satisfy the requirements under Code Section 409A to the effect that such SARs do not provide for the deferral of compensation that is subject to taxation under Code Section 409A.

(b) General Provisions. The terms and conditions of each SAR shall be evidenced by an Incentive Agreement. The exercise price per Share shall not be less than one hundred percent (100%) of the Fair Market Value of a Share on the grant date of the SAR. The term of the SAR shall be determined by the Committee but shall not be greater than ten (10) years from the date of grant. The Committee cannot include any feature for the deferral of compensation other than the deferral of recognition of income until exercise of the SAR.

(c) Exercise. SARs shall be exercisable subject to such terms and conditions as the Committee shall specify in the Incentive Agreement for the SAR grant. No SAR granted to an Insider may be exercised prior to six (6) months from the date of grant, except in the event of his death or Disability which occurs prior to the expiration of such six-month period if so permitted under the Incentive Agreement.

(d) Settlement. Upon exercise of the SAR, the Grantee shall receive an amount equal to the Spread. The Spread, less applicable withholdings, shall be payable only in cash or in Shares, or a combination of both, as specified in the Incentive Agreement, within 30 calendar days of the exercise date. In addition, the Incentive Agreement under which such SARs are awarded, or any other agreements or arrangements, shall not provide that the Company will purchase any Shares delivered to the Grantee as a result of the exercise or vesting of a SAR.

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SECTION 3.
RESTRICTED STOCK

3.1 Award of Restricted Stock

(a) Grant. With respect to a Grantee who is an Employee, Consultant or Outside Director, Shares of Restricted Stock, which may be designated as a Performance-Based Award in the discretion of the Committee, may be awarded by the Committee with such restrictions during the Restriction Period as the Committee shall designate in its discretion. Any such restrictions may differ with respect to a particular Grantee. Restricted Stock shall be awarded for no additional consideration or such additional consideration as the Committee may determine, which consideration may be less than, equal to or more than the Fair Market Value of the shares of Restricted Stock on the grant date. The terms and conditions of each grant of Restricted Stock shall be evidenced by an Incentive Agreement and, during the Restriction Period, such Shares of Restricted Stock must remain subject to a substantial risk of forfeiture within the meaning given to such term under Code Section 83. Any Restricted Stock Award may, at the time of grant, be designated by the Committee as a Performance-Based Award that is intended to qualify for the Performance-Based Exception.

(b) Immediate Transfer Without Immediate Delivery of Restricted Stock. Unless otherwise specified in the Grantee's Incentive Agreement, each Restricted Stock Award shall constitute an immediate transfer of the record and beneficial ownership of the Shares of Restricted Stock to the Grantee in consideration of the performance of services as an Employee, Consultant or Outside Director, as applicable, entitling such Grantee to all voting and other ownership rights in such Shares.

As specified in the Incentive Agreement, a Restricted Stock Award may limit the Grantee's dividend rights during the Restriction Period in which the shares of Restricted Stock are subject to a substantial risk of forfeiture (within the meaning given to such term under Code Section 83) and restrictions on transfer. In the Incentive Agreement, the Committee may apply any restrictions to the dividends that the Committee deems appropriate. Without limiting the generality of the preceding sentence, if the grant or vesting of Shares of a Restricted Stock Award granted to a Covered Employee, is designed to comply with the requirements of the Performance-Based Exception, the Committee may apply any restrictions it deems appropriate to the payment of dividends declared with respect to such Shares of Restricted Stock, such that the dividends and/or the Shares of Restricted Stock maintain eligibility for the Performance-Based Exception. In the event that any dividend constitutes a derivative security or an equity security pursuant to the rules under Section 16 of the Exchange Act, if applicable, such dividend shall be subject to a vesting period equal to the remaining vesting period of the Shares of Restricted Stock with respect to which the dividend is paid.

Shares awarded pursuant to a grant of Restricted Stock, whether or not under a Performance-Based Award, may be issued in the name of the Grantee and held, together with a stock power endorsed in blank, by the Committee or Company (or their delegates)

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or in trust or in escrow pursuant to an agreement satisfactory to the Committee, as determined by the Committee, until such time as the restrictions on transfer have expired. All such terms and conditions shall be set forth in the particular Grantee's Incentive Agreement. The Company or Committee (or their delegates) shall issue to the Grantee a receipt evidencing the certificates held by it which are registered in the name of the Grantee.

3.2 Restrictions

(a) Forfeiture of Restricted Stock. Restricted Stock awarded to a Grantee may be subject to the following restrictions until the expiration of the Restriction Period: (i) a restriction that constitutes a substantial risk of forfeiture (as defined in Code Section 83), and a restriction on transferability; (ii) unless otherwise specified by the Committee in the Incentive Agreement, the Restricted Stock that is subject to restrictions which are not satisfied shall be forfeited and all rights of the Grantee to such Shares shall terminate; and (iii) any other restrictions that the Committee determines in advance are appropriate, including, without limitation, rights of repurchase or first refusal in the Company or provisions subjecting the Restricted Stock to a continuing substantial risk of forfeiture in the hands of any transferee. Any such restrictions shall be set forth in the particular Grantee's Incentive Agreement.

(b) Issuance of Certificates. Reasonably promptly after the date of grant with respect to Shares of Restricted Stock, the Company shall cause to be issued a stock certificate, registered in the name of the Grantee to whom such Shares of Restricted Stock were granted, evidencing such Shares; provided, however, that the Company shall not cause to be issued such a stock certificate unless it has received a stock power duly endorsed in blank with respect to such Shares. Each such stock certificate shall bear the following legend or any other legend approved by the Company:

The transferability of this certificate and the shares of stock represented hereby are subject to the restrictions, terms and conditions (including forfeiture and restrictions against transfer) contained in the Astrotech Corporation 2010 Stock Incentive Plan and an Incentive Agreement entered into between the registered owner of such shares and Astrotech Corporation. A copy of the Plan and Incentive Agreement are on file in the main corporate office of Astrotech Corporation.

Such legend shall not be removed from the certificate evidencing such Shares of Restricted Stock unless and until such Shares vest pursuant to the terms of the Incentive Agreement.

(c) Removal of Restrictions. The Committee, in its discretion, shall have the authority to remove any or all of the restrictions on the Restricted Stock if it determines that, by reason of a change in applicable law or another change in circumstance arising after the grant date of the Restricted Stock, such action is necessary or appropriate.

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3.3 Delivery of Shares of Common Stock

Subject to withholding taxes under Section 7.3 and to the terms of the Incentive Agreement, a stock certificate evidencing the Shares of Restricted Stock with respect to which the restrictions in the Incentive Agreement have been satisfied shall be delivered to the Grantee or other appropriate recipient free of restrictions.

3.4 Supplemental Payment on Vesting of Restricted Stock

The Committee, either at the time of grant or vesting of Restricted Stock, may provide for a Supplemental Payment by the Company to the holder in an amount specified by the Committee, which amount shall not exceed the amount necessary to pay the federal and state income tax payable with respect to both the vesting of the Restricted Stock and receipt of the Supplemental Payment, assuming the Grantee is taxed at either the maximum effective income tax rate applicable thereto or at a lower tax rate as deemed appropriate by the Committee in its discretion.

SECTION 4.

OTHER STOCK-BASED AWARDS

4.1 Grant of Other Stock-Based Awards

Other Stock-Based Awards may be awarded by the Committee to Grantees that are payable in Shares or in cash, as determined in the discretion of the Committee to be consistent with the goals of the Company. Other types of Stock-Based Awards that are payable in Shares include, without limitation, purchase rights, Shares awarded that are not subject to any restrictions or conditions, Shares awarded subject to the satisfaction of specified Performance Criteria, convertible or exchangeable debentures, other rights convertible into Shares, Incentive Awards valued by reference to the performance of a specified Subsidiary, division or department of the Company, and settlement in cancellation of rights of any person with a vested interest in any other plan, fund, program or arrangement that is or was sponsored, maintained or participated in by the Company (or any Parent or Subsidiary). As is the case with other types of Incentive Awards, Other Stock-Based Awards may be awarded either alone or in addition to or in conjunction with any other Incentive Awards. Other Stock-Based Awards that are payable in Shares are not intended to be deferred compensation subject to taxation under Code Section 409A, unless otherwise determined by the Committee at the time of grant.

In addition to Other Stock-Based Awards that are payable in Shares, the Committee may award Restricted Stock Units to a Grantee that are payable in Shares or cash, or in a combination thereof. Restricted Stock Units are not intended to be deferred compensation that is subject to Code Section 409A. During the period beginning on the date such Incentive Award is granted and ending on the payment date specified in the Incentive Agreement, the Grantee's right to payment under the Incentive Agreement must remain subject to a substantial risk of forfeiture within the meaning of such term under Code Section 409A. In addition, payment to the Grantee under the Incentive Agreement shall be made within two and one-half months (2¹/₂) months

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following the end of the calendar year in which the substantial risk of forfeiture lapses unless an earlier payment date is specified in the Incentive Agreement.

4.2 Other Stock-Based Award Terms

(a) *Written Agreement.* The terms and conditions of each grant of an Other Stock-Based Award shall be evidenced by an Incentive Agreement.

(b) *Purchase Price.* Except to the extent that an Other Stock-Based Award is granted in substitution for an outstanding Incentive Award or is delivered upon exercise of a Stock Option, the amount of consideration required to be received by the Company shall be either (i) no consideration other than services rendered (in the case of authorized and unissued shares), or to be rendered, by the Grantee, or (ii) as otherwise specified in the Incentive Agreement.

(c) *Performance Criteria and Other Terms.* The Committee may specify Performance Criteria for (i) vesting in Other Stock-Based Awards and (ii) payment thereof to the Grantee, as it may determine in its discretion. The extent to which any such Performance Criteria have been met shall be determined and certified by the Committee in accordance with the requirements to qualify for the Performance-Based Exception under Code Section 162(m). All terms and conditions of Other Stock-Based Awards shall be determined by the Committee and set forth in the Incentive Agreement.

4.3 Supplemental Payment on Other Stock-Based Awards

The Committee, either at the time of grant or vesting of an Other Stock-Based Award, may provide for a Supplemental Payment by the Company to the holder in an amount specified by the Committee, which amount shall not exceed the amount necessary to pay the federal and state income tax payable with respect to both the vesting of the Other Stock-Based Award and receipt of the Supplemental Payment, assuming the Grantee is taxed at either the maximum effective income tax rate applicable thereto or at a lower tax rate as deemed appropriate by the Committee in its discretion.

SECTION 5.

PERFORMANCE-BASED AWARDS AND PERFORMANCE CRITERIA

As determined by the Committee at the time of grant, Performance-Based Awards may be granted subject to performance objectives relating to one or more of the following within the meaning of Code Section 162(m) (the **Performance Criteria**) in order to qualify for the Performance-Based Exception:

- (a) profits (including, but not limited to, profit growth, net operating profit or economic profit);
- (b) profit-related return ratios;

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- (c) return measures (including, but not limited to, return on assets, capital, equity, investment or sales);
- (d) cash flow (including, but not limited to, operating cash flow, free cash flow or cash flow return on capital or investments);
- (e) earnings (including but not limited to, total shareholder return, earnings per share or earnings before or after taxes);
- (f) net sales growth;
- (g) net earnings or income (before or after taxes, interest, depreciation and/or amortization);
- (h) gross, operating or net profit margins;
- (i) productivity ratios;
- (j) share price (including, but not limited to, growth measures and total shareholder return);
- (k) turnover of assets, capital, or inventory;
- (l) expense targets;
- (m) margins;
- (n) measures of health, safety or environment;
- (o) operating efficiency;
- (p) customer service or satisfaction;
- (q) market share;
- (r) credit quality;
- (s) debt ratios (*e.g.*, debt to equity and debt to total capital); and
- (t) working capital targets.

Performance Criteria may be stated in absolute terms or relative to comparison companies or indices to be achieved during a Performance Period. In the Incentive Agreement, the Committee shall establish one or more Performance Criteria for each Incentive Award that is intended to qualify for the Performance-Based Exception on its grant date.

In establishing the Performance Criteria for each applicable Incentive Award, the Committee may provide that the effect of specified extraordinary or unusual events will be included or excluded (including, but not limited to, items of gain, loss or expense determined to

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be extraordinary or unusual in nature or infrequent in occurrence, or related to the disposal of a segment of business or a change in accounting principle, each as determined in accordance with the standards under Opinion No. 30 of the Accounting Principles Board (APB Opinion 30) or any successor or other authoritative financial accounting standards, as determined by the Committee). The terms of the stated Performance Criteria for each applicable Incentive Award, whether for a Performance Period of one (1) year or multiple years, must preclude the Committee's discretion to increase the amount payable to any Grantee that would otherwise be due upon attainment of the Performance Criteria, but may permit the Committee to reduce the amount otherwise payable to the Grantee in the Committee's discretion.

The Performance Criteria specified in any Incentive Agreement need not be applicable to all Incentive Awards, and may be particular to an individual Grantee's function or business unit. The Committee may establish the Performance Criteria of the Company (or any entity which is affiliated by common ownership with the Company) as determined and designated by the Committee, in its discretion, in the Incentive Agreement.

Performance-Based Awards will be granted in the discretion of the Committee and will be (a) sufficiently objective so that an independent person or entity having knowledge of the relevant facts could determine the amount payable to Grantee, if applicable, and whether the pre-determined goals have been achieved with respect to the Incentive Award, (b) established at a time when the performance outcome is substantially uncertain, (c) established in writing no later than ninety (90) days after the commencement of the Performance Period to which they apply, and (d) based on operating earnings, performance against peers, earnings criteria or such other criteria as provided in this [Section 5](#).

SECTION 6.

PROVISIONS RELATING TO PLAN PARTICIPATION

6.1 Incentive Agreement

Each Grantee to whom an Incentive Award is granted shall be required to enter into an Incentive Agreement with the Company, in such a form as is provided by the Committee. The Incentive Agreement shall contain specific terms as determined by the Committee, in its discretion, with respect to the Grantee's particular Incentive Award. Such terms need not be uniform among all Grantees or any similarly situated Grantees. The Incentive Agreement may include, without limitation, vesting, forfeiture and other provisions particular to the particular Grantee's Incentive Award, as well as, for example, provisions to the effect that the Grantee (a) shall not disclose any confidential information acquired during Employment with the Company, (b) shall abide by all the terms and conditions of the Plan and such other terms and conditions as may be imposed by the Committee, (c) shall not interfere with the employment or other service of any employee, (d) shall not compete with the Company or become involved in a conflict of interest with the interests of the Company, (e) shall forfeit an Incentive Award if terminated for Cause, (f) shall not be permitted to make an election under Code Section 83(b) when applicable, and (g) shall be subject to any other agreement between the Grantee and the Company regarding Shares that may be acquired under an Incentive Award including, without limitation, a shareholders' agreement, buy-sell agreement, or other agreement restricting the

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transferability of Shares by Grantee. An Incentive Agreement shall include such terms and conditions as are determined by the Committee, in its discretion, to be appropriate with respect to any individual Grantee. The Incentive Agreement shall be signed by the Grantee to whom the Incentive Award is made and by an Authorized Officer.

6.2 No Right to Employment

Nothing in the Plan or any instrument executed pursuant to the Plan shall create any Employment rights (including without limitation, rights to continued Employment) in any Grantee or affect the right of the Company to terminate the Employment of any Grantee at any time without regard to the existence of the Plan.

6.3 Securities Requirements

The Company shall be under no obligation to effect the registration of any Shares to be issued hereunder pursuant to the Securities Act of 1933 or to effect similar compliance under any state securities laws. Notwithstanding anything herein to the contrary, the Company shall not be obligated to cause to be issued or delivered any certificates evidencing Shares pursuant to the Plan unless and until the Company is advised by its counsel that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities, and the requirements of any securities exchange on which Shares are traded. The Committee may require, as a condition of the issuance and delivery of certificates evidencing Shares pursuant to the terms hereof, that the recipient of such Shares make such covenants, agreements and representations, and that such certificates bear such legends, as the Committee, in its discretion, deems necessary or desirable.

The Committee may, in its discretion, defer the effectiveness of any exercise of an Incentive Award in order to allow the issuance of Shares to be made pursuant to registration or an exemption from registration or other methods for compliance available under federal or state securities laws. The Committee shall inform the Grantee in writing of its decision to defer the effectiveness of the exercise of an Incentive Award. During the period that the effectiveness of the exercise of an Incentive Award has been deferred, the Grantee may, by written notice to the Committee, withdraw such exercise and obtain the refund of any amount paid with respect thereto.

If the Shares issuable on exercise of an Incentive Award are not registered under the Securities Act of 1933, the Company may imprint on the certificate for such Shares the following legend or any other legend which counsel for the Company considers necessary or advisable to comply with the Securities Act of 1933:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (ACT), OR THE SECURITIES LAWS OF ANY STATE. THE SECURITIES MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO ANY APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS

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OF SUCH ACT AND SUCH LAWS OR PURSUANT TO A WRITTEN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

6.4 Transferability

Incentive Awards granted under the Plan shall not be transferable or assignable other than: (a) by will or the laws of descent and distribution or (b) pursuant to a qualified domestic relations order (as defined under Code Section 414(p)); provided, however, only with respect to Incentive Awards consisting of Nonstatutory Stock Options, the Committee may, in its discretion, authorize all or a portion of the Nonstatutory Stock Options to be granted on terms which permit transfer by the Grantee to (i) the members of the Grantee's Immediate Family, (ii) a trust or trusts for the exclusive benefit of Immediate Family members, (iii) a partnership in which such Immediate Family members are the only partners, or (iv) any other entity owned solely by Immediate Family members; provided that (A) there may be no consideration for any such transfer, (B) the Incentive Agreement pursuant to which such Nonstatutory Stock Options are granted must be approved by the Committee, and must expressly provide for transferability in a manner consistent with this Section 6.4, (C) subsequent transfers of transferred Nonstatutory Stock Options shall be prohibited except in accordance with clauses (a) and (b) (above) of this sentence, and (D) there may be no transfer of any Incentive Award in a listed transaction as described in IRS Notice 2003-47. Following any permitted transfer, the Nonstatutory Stock Option shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, provided that the term Grantee shall be deemed to refer to the transferee. The events of termination of employment, as set out in Section 6.7 and in the Incentive Agreement, shall continue to be applied with respect to the original Grantee, and the Incentive Award shall be exercisable by the transferee only to the extent, and for the periods, specified in the Incentive Agreement.

Except as may otherwise be permitted under the Code, in the event of a permitted transfer of a Nonstatutory Stock Option hereunder, the original Grantee shall remain subject to withholding taxes upon exercise. In addition, the Company and the Committee shall have no obligation to provide any notices to any Grantee or transferee thereof, including, for example, notice of the expiration of an Incentive Award following the original Grantee's termination of employment.

The designation by a Grantee of a beneficiary of an Incentive Award shall not constitute transfer of the Incentive Award. No transfer by will or by the laws of descent and distribution shall be effective to bind the Company unless the Committee has been furnished with a copy of the deceased Grantee's enforceable will or such other evidence as the Committee deems necessary to establish the validity of the transfer. Any attempted transfer in violation of this Section 6.4 shall be void and ineffective. All determinations under this Section 6.4 shall be made by the Committee in its discretion.

6.5 Rights as a Shareholder

(a) No Shareholder Rights. Except as otherwise provided in Section 3.1(b) for grants of Restricted Stock, a Grantee of an Incentive Award (or a permitted transferee

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of such Grantee) shall have no rights as a shareholder with respect to any Shares of Common Stock until the issuance of a stock certificate or other record of ownership for such Shares.

(b) Representation of Ownership. In the case of the exercise of an Incentive Award by a person or estate acquiring the right to exercise such Incentive Award by reason of the death or Disability of a Grantee, the Committee may require reasonable evidence as to the ownership of such Incentive Award or the authority of such person. The Committee may also require such consents and releases of taxing authorities as it deems advisable.

6.6 Change in Stock and Adjustments

(a) Changes in Law or Circumstances. Subject to Section 6.8 (which only applies in the event of a Change in Control), in the event of any change in applicable law or any change in circumstances which results in or would result in any dilution of the rights granted under the Plan, or which otherwise warrants an equitable adjustment because it interferes with the intended operation of the Plan, then, if the Board or Committee should so determine, in its absolute discretion, that such change equitably requires an adjustment in the number or kind of shares of stock or other securities or property theretofore subject, or which may become subject, to issuance or transfer under the Plan or in the terms and conditions of outstanding Incentive Awards, such adjustment shall be made in accordance with such determination. Such adjustments may include changes with respect to (i) the aggregate number of Shares that may be issued under the Plan, (ii) the number of Shares subject to Incentive Awards, and (iii) the Option Price or other price per Share for outstanding Incentive Awards, but shall not result in the grant of any Stock Option with an exercise price less than 100% of the Fair Market Value per Share on the date of grant. The Board or Committee shall give notice to each applicable Grantee of such adjustment which shall be effective and binding.

(b) Exercise of Corporate Powers. The existence of the Plan or outstanding Incentive Awards hereunder shall not affect in any way the right or power of the Company or its shareholders to make or authorize any or all adjustments, recapitalization, reorganization or other changes in the Company's capital structure or its business or any merger or consolidation of the Company, or any issue of bonds, debentures, preferred or prior preference stocks ahead of or affecting the Common Stock or the rights thereof, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding whether of a similar character or otherwise.

(c) Recapitalization of the Company. Subject to Section 6.8 (which only applies in the event of a Change in Control), if while there are Incentive Awards outstanding, the Company shall effect any subdivision or consolidation of Shares of Common Stock or other capital readjustment, the payment of a stock dividend, stock split, combination of Shares, recapitalization or other increase or reduction in the number of Shares outstanding, without receiving compensation therefor in money, services or property, then the number of Shares available under the Plan and the number of Incentive

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Awards which may thereafter be exercised shall (i) in the event of an increase in the number of Shares outstanding, be proportionately increased and the Option Price or Fair Market Value of the Incentive Awards awarded shall be proportionately reduced; and (ii) in the event of a reduction in the number of Shares outstanding, be proportionately reduced, and the Option Price or Fair Market Value of the Incentive Awards awarded shall be proportionately increased. The Board or Committee shall take such action and whatever other action it deems appropriate, in its discretion, so that the value of each outstanding Incentive Award to the Grantee shall not be adversely affected by a corporate event described in this Section 6.6(c).

(d) Issue of Common Stock by the Company. Except as hereinabove expressly provided in this Section 6.6 and subject to Section 6.8 in the event of a Change in Control, the issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, for cash or property, or for labor or services, either upon direct sale or upon the exercise of rights or warrants to subscribe therefor, or upon any conversion of shares or obligations of the Company convertible into such shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number of, or Option Price or Fair Market Value of, any Incentive Awards then outstanding under previously granted Incentive Awards; provided, however, in such event, outstanding Shares of Restricted Stock shall be treated the same as outstanding unrestricted Shares of Common Stock.

(e) Assumption under the Plan of Outstanding Stock Options. Notwithstanding any other provision of the Plan, the Board or Committee, in its discretion, may authorize the assumption and continuation under the Plan of outstanding and unexercised stock options or other types of stock-based incentive awards that were granted under a stock option plan (or other type of stock incentive plan or agreement) that is or was maintained by a corporation or other entity that was merged into, consolidated with, or whose stock or assets were acquired by, the Company as the surviving corporation. Any such action shall be upon such terms and conditions as the Board or Committee, in its discretion, may deem appropriate, including provisions to preserve the holder's rights under the previously granted and unexercised stock option or other stock-based incentive award; such as, for example, retaining an existing exercise price under an outstanding stock option. Any such assumption and continuation of any such previously granted and unexercised incentive award shall be treated as an outstanding Incentive Award under the Plan and shall thus count against the number of Shares reserved for issuance pursuant to Section 1.4. In addition, any Shares issued by the Company through the assumption or substitution of outstanding grants from an acquired company shall reduce the Shares available for grants under Section 1.4.

(f) Assumption of Incentive Awards by a Successor. Subject to the accelerated vesting and other provisions of Section 6.8 that apply in the event of a Change in Control, in the event of a Corporate Event (defined below), each Grantee shall be entitled to receive, in lieu of the number of Shares subject to Incentive Awards, such shares of capital stock or other securities or property as may be issuable or payable with respect to or in exchange for the number of Shares which Grantee would have received had he exercised the Incentive Award immediately prior to such Corporate Event,

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together with any adjustments (including, without limitation, adjustments to the Option Price and the number of Shares issuable on exercise of outstanding Stock Options). For this purpose, Shares of Restricted Stock shall be treated the same as unrestricted outstanding Shares of Common Stock. A Corporate Event means any of the following: (i) a dissolution or liquidation of the Company, (ii) a sale of all or substantially all of the Company's assets, or (iii) a merger, consolidation or combination involving the Company (other than a merger, consolidation or combination (A) in which the Company is the continuing or surviving corporation and (B) which does not result in the outstanding Shares being converted into or exchanged for different securities, cash or other property, or any combination thereof). The Board or Committee shall take whatever other action it deems appropriate to preserve the rights of Grantees holding outstanding Incentive Awards.

Notwithstanding the previous paragraph of this Section 6.6(f), but subject to the accelerated vesting and other provisions of Section 6.8 that apply in the event of a Change in Control, in the event of a Corporate Event (described in the previous paragraph), the Board or Committee, in its discretion, shall have the right and power to:

- (i) cancel, effective immediately prior to the occurrence of the Corporate Event, each outstanding Incentive Award (whether or not then exercisable) and, in full consideration of such cancellation, pay to the Grantee an amount in cash equal to the excess of (A) the value, as determined by the Board or Committee, of the property (including cash) received by the holders of Common Stock as a result of such Corporate Event over (B) the exercise price of such Incentive Award, if any; provided, however, this subsection (i) shall be inapplicable to an Incentive Award granted within six (6) months before the occurrence of the Corporate Event if the Grantee is an Insider and such disposition is not exempt under Rule 16b-3 (or other rules preventing liability of the Insider under Section 16(b) of the Exchange Act) and, in that event, the provisions hereof shall be applicable to such Incentive Award after the expiration of six (6) months from the date of grant; or
- (ii) provide for the exchange or substitution of each Incentive Award outstanding immediately prior to such Corporate Event (whether or not then exercisable) for another award with respect to the Common Stock or other property for which such Incentive Award is exchangeable and, incident thereto, make an equitable adjustment as determined by the Board or Committee, in its discretion, in the Option Price or exercise price of the Incentive Award, if any, or in the number of Shares or amount of property (including cash) subject to the Incentive Award; or
- (iii) provide for assumption of the Plan and such outstanding Incentive Awards by the surviving entity or its parent.

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The Board or Committee, in its discretion, shall have the authority to take whatever action it deems to be necessary or appropriate to effectuate the provisions of this Section 6.6(f).

6.7 Termination of Employment, Death, Disability and Retirement

(a) Termination of Employment. Unless otherwise expressly provided in the Grantee's Incentive Agreement or the Plan, if the Grantee's Employment is terminated for any reason other than due to his death, Disability, Retirement or for Cause, any non-vested portion of any Stock Option or other Incentive Award at the time of such termination shall automatically expire and terminate and no further vesting shall occur after the termination date. In such event, except as otherwise expressly provided in his Incentive Agreement, the Grantee shall be entitled to exercise his rights only with respect to the portion of the Incentive Award that was vested as of his termination of Employment date for a period that shall end on the earlier of (i) the expiration date set forth in the Incentive Agreement or (ii) ninety (90) days after the date of his termination of Employment.

(b) Termination of Employment for Cause. Unless otherwise expressly provided in the Grantee's Incentive Agreement or the Plan, in the event of the termination of a Grantee's Employment for Cause, all vested and non-vested Stock Options and other Incentive Awards granted to such Grantee shall immediately expire, and shall not be exercisable to any extent, as of 12:01 a.m. (CST) on the date of such termination of Employment.

(c) Retirement. Unless otherwise expressly provided in the Grantee's Incentive Agreement or the Plan, upon the termination of Employment due to the Grantee's Retirement:

- (i) any non-vested portion of any outstanding Option or other Incentive Award shall immediately terminate and no further vesting shall occur; and

- (ii) any vested Option or other Incentive Award shall expire on the earlier of (A) the expiration date set forth in the Incentive Agreement for such Incentive Award; or (B) the expiration of (1) six (6) months after the date of his termination of Employment due to Retirement in the case of any Incentive Award other than an Incentive Stock Option or (2) three months after his termination date in the case of an Incentive Stock Option.

(d) Disability or Death. Unless otherwise expressly provided in the Grantee's Incentive Agreement or the Plan, upon termination of Employment as a result of the Grantee's Disability or death:

- (i) any non-vested portion of any outstanding Option or other Incentive Award shall immediately terminate upon termination of Employment and no further vesting shall occur; and

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- (ii) any vested Incentive Award shall expire on the earlier of either (A) the expiration date set forth in the Incentive Agreement or (B) the one year anniversary date of the Grantee's termination of Employment date.

In the case of any vested Incentive Stock Option held by an Employee following termination of Employment, notwithstanding the definition of Disability in Section 1.2, whether the Employee has incurred a Disability for purposes of determining the length of the Option exercise period following termination of Employment under this Section 6.7(d) shall be determined by reference to Code Section 22(e)(3) to the extent required by Code Section 422(c)(6). The Committee shall determine whether a Disability for purposes of this Section 6.7(d) has occurred.

(e) Continuation. Subject to the conditions and limitations of the Plan and applicable law and regulation in the event that a Grantee ceases to be an Employee, Outside Director or Consultant, as applicable, for whatever reason, the Committee and Grantee may mutually agree with respect to any outstanding Option or other Incentive Award then held by the Grantee (i) for an acceleration or other adjustment in any vesting schedule applicable to the Incentive Award; (ii) for a continuation of the exercise period following termination for a longer period than is otherwise provided under such Incentive Award; or (iii) to any other change in the terms and conditions of the Incentive Award. In the event of any such change to an outstanding Incentive Award, a written amendment to the Grantee's Incentive Agreement shall be required. No amendment to a Grantee's Incentive Award shall be made to the extent compensation payable pursuant thereto as a result of such amendment would be considered deferred compensation subject to taxation under Code Section 409A, unless otherwise determined by the Committee.

6.8 Change in Control

Notwithstanding any contrary provision in the Plan, in the event of a Change in Control (as defined below), the following actions shall automatically occur as of the day immediately preceding the Change in Control date unless expressly provided otherwise in the individual Grantee's Incentive Agreement:

- (a) all of the Stock Options and Stock Appreciation Rights then outstanding shall become 100% vested and immediately and fully exercisable;
- (b) all of the restrictions and conditions of any Restricted Stock Awards, Restricted Stock Units and any Other Stock-Based Awards then outstanding shall be deemed satisfied, and the Restriction Period with respect thereto shall be deemed to have expired, and thus each such Incentive Award shall become free of all restrictions and fully vested; and
- (c) all of the Performance-Based Awards shall become fully vested, deemed earned in full, and promptly paid within thirty (30) days to the affected Grantees without regard to payment schedules and notwithstanding that the applicable performance cycle, retention cycle or other restrictions and conditions have not been completed or satisfied.

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For all purposes of this Plan, a **Change in Control** of the Company means the occurrence of any one or more of the following events:

(d) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a **Person**)) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of fifty percent (50%) or more of either (i) the then outstanding shares of common stock of the Company (the **Outstanding Company Stock**) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the **Outstanding Company Voting Securities**); provided, however, that the following acquisitions shall not constitute a Change in Control: (i) any acquisition directly from the Company or any Subsidiary, (ii) any acquisition by the Company or any Subsidiary or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, or (iii) any acquisition by any corporation pursuant to a reorganization, merger, consolidation or similar business combination involving the Company (a **Merger**), if, following such Merger, the conditions described in Section 6.8(c) (below) are satisfied;

(e) Individuals who, as of the Effective Date, constitute the Board of Directors of the Company (the **Incumbent Board**) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(f) Approval by the shareholders of the Company of a Merger, unless immediately following such Merger, (i) substantially all of the holders of the Outstanding Company Voting Securities immediately prior to Merger beneficially own, directly or indirectly, more than fifty percent (50%) of the common stock of the corporation resulting from such Merger (or its parent corporation) in substantially the same proportions as their ownership of Outstanding Company Voting Securities immediately prior to such Merger and (ii) at least a majority of the members of the board of directors of the corporation resulting from such Merger (or its parent corporation) were members of the Incumbent Board at the time of the execution of the initial agreement providing for such Merger;

(g) The sale or other disposition of all or substantially all of the assets of the Company, unless immediately following such sale or other disposition, (i) substantially all of the holders of the Outstanding Company Voting Securities immediately prior to the consummation of such sale or other disposition beneficially own, directly or indirectly, more than fifty percent (50%) of the common stock of the corporation acquiring such assets in substantially the same proportions as their ownership of Outstanding Company

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Voting Securities immediately prior to the consummation of such sale or disposition, and (ii) at least a majority of the members of the board of directors of such corporation (or its parent corporation) were members of the Incumbent Board at the time of execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Company; or

(h) The adoption of any plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the foregoing provisions of this Section 6.8, to the extent that any payment (or acceleration of payment) hereunder is considered to be deferred compensation that is subject to, and not exempt under, Code Section 409A, then the term Change in Control hereunder shall be construed to have the meaning as set forth in Code Section 409A with respect to the payment (or acceleration of payment) of such deferred compensation, but only to the extent inconsistent with the foregoing provisions of the Change in Control definition (above) as determined by the Incumbent Board.

6.9 Exchange of Incentive Awards

The Committee may, in its discretion, permit any Grantee to surrender outstanding Incentive Awards in order to exercise or realize his rights under other Incentive Awards or in exchange for the grant of new Incentive Awards, or require holders of Incentive Awards to surrender outstanding Incentive Awards (or comparable rights under other plans or arrangements) as a condition precedent to the grant of new Incentive Awards. No exchange of Incentive Awards shall be made under this Section 6.9 if such surrender causes any Incentive Award to provide for the deferral of compensation in a manner that is subject to taxation under Code Section 409A unless otherwise determined by the Committee.

SECTION 7.
GENERAL

7.1 Effective Date and Grant Period

The Plan shall be subject to the approval of the shareholders of the Company within twelve (12) months after the Effective Date. Incentive Awards may be granted under the Plan at any time prior to receipt of such shareholder approval; provided, however, if the requisite shareholder approval is not obtained within such 12-month period, any Incentive Awards granted hereunder shall automatically become null and void and of no force or effect. Notwithstanding the foregoing, any Incentive Award that is intended to satisfy the Performance-Based Exception shall not be granted until the terms of the Plan are disclosed to, and approved by, shareholders of the Company in accordance with the requirements of the Performance-Based Exception.

7.2 Funding and Liability of Company

No provision of the Plan shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made, or otherwise to segregate any assets. In addition, the Company

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shall not be required to maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for purposes of the Plan. Although bookkeeping accounts may be established with respect to Grantees who are entitled to cash, Common Stock or rights thereto under the Plan, any such accounts shall be used merely as a bookkeeping convenience. The Company shall not be required to segregate any assets that may at any time be represented by cash, Common Stock or rights thereto. The Plan shall not be construed as providing for such segregation, nor shall the Company, the Board or the Committee be deemed to be a trustee of any cash, Common Stock or rights thereto. Any liability or obligation of the Company to any Grantee with respect to an Incentive Award shall be based solely upon any contractual obligations that may be created by this Plan and any Incentive Agreement, and no such liability or obligation of the Company shall be deemed to be secured by any pledge or other encumbrance on any property of the Company. The Company, Board, and Committee shall not be required to give any security or bond for the performance of any obligation that may be created by the Plan.

7.3 Withholding Taxes

(a) Tax Withholding. The Company shall have the power and the right to deduct or withhold, or require a Grantee to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of the Plan or an Incentive Award hereunder. Upon the lapse of restrictions on Restricted Stock, the Committee, in its discretion, may elect to satisfy the tax withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum withholding taxes which could be imposed on the transaction as determined by the Committee.

(b) Share Withholding. With respect to tax withholding required upon the exercise of Stock Options or SARs, upon the lapse of restrictions on Restricted Stock, or upon any other taxable event arising as a result of any Incentive Awards, Grantees may elect, subject to the approval of the Committee in its discretion, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum withholding taxes which could be imposed on the transaction as determined by the Committee. All such elections shall be made in writing, signed by the Grantee, and shall be subject to any restrictions or limitations that the Committee, in its discretion, deems appropriate.

(c) Incentive Stock Options. With respect to Shares received by a Grantee pursuant to the exercise of an Incentive Stock Option, if such Grantee disposes of any such Shares within (i) two years from the date of grant of such Option or (ii) one year after the transfer of such shares to the Grantee, the Company shall have the right to withhold from any salary, wages or other compensation payable by the Company to the Grantee an amount sufficient to satisfy the minimum withholding taxes which could be imposed with respect to such disqualifying disposition.

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7.4 No Guarantee of Tax Consequences

The Company, Board and the Committee do not make any commitment or guarantee that any federal, state, local or foreign tax treatment will apply or be available to any person participating or eligible to participate hereunder.

7.5 Designation of Beneficiary by Participant

Each Grantee may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his death before he receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Grantee, shall be in a form prescribed by the Committee, and will be effective only when filed by the Grantee in writing with the Committee (or its delegate), and received and accepted during the Grantee's lifetime. In the absence of any such designation, benefits remaining unpaid at the Grantee's death shall be paid to the Grantee's estate.

7.6 Deferrals

Subject to the requirements for compliance with, or exemption under, Code Section 409A, if applicable, the Committee shall not permit a Grantee to defer such Grantee's receipt of the payment of cash or the delivery of Shares under the terms of his Incentive Agreement that would otherwise be due and payable by virtue of the lapse or waiver of restrictions with respect to Restricted Stock or another form of Incentive Award, or the satisfaction of any requirements or goals with respect to any Incentive Awards.

7.7 Amendment and Termination

The Board shall have the power and authority to terminate or amend the Plan at any time in its discretion; provided, however, the Board shall not, without the approval of the shareholders of the Company within the time period required by applicable law:

(a) except as provided in Section 6.6, increase the maximum number of Shares that may be issued under the Plan pursuant to Section 1.4;

(b) amend the requirements as to the class of Employees eligible to purchase Common Stock under the Plan;

(c) extend the term of the Plan; or,

(d) if the Company is a Publicly Held Corporation (i) increase the maximum limits on Incentive Awards to Covered Employees as set for compliance with the Performance-Based Exception or (ii) decrease the authority granted to the Committee under the Plan in contravention of Rule 16b-3 under the Exchange Act to the extent Section 16 of the Exchange Act is applicable to the Company.

No termination, amendment, or modification of the Plan shall adversely affect in any material way any outstanding Incentive Award previously granted to a Grantee under the Plan, without the written consent of such Grantee or other designated holder of such Incentive Award.

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In addition, to the extent that the Committee determines that (a) the listing for qualification requirements of any national securities exchange or quotation system on which the Company's Common Stock is then listed or quoted, if applicable, or (b) the Code (or regulations promulgated thereunder), require shareholder approval in order to maintain compliance with such listing requirements or to maintain any favorable tax advantages or qualifications, then the Plan shall not be amended in such respect without approval of the Company's shareholders.

7.8 Requirements of Law

(a) Governmental Entities and Securities Exchanges. The granting of Incentive Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required. Certificates evidencing Shares delivered under the Plan (to the extent that such shares are so evidenced) may be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules and regulations of the Securities and Exchange Commission, any securities exchange or transaction reporting system upon which the Common Stock is then listed or to which it is admitted for quotation, and any applicable federal or state securities law or regulation. The Committee may cause a legend or legends to be placed upon such certificates (if any) to make appropriate reference to such restrictions.

The Company shall not be required to sell or issue any Shares under any Incentive Award if the sale or issuance of such Shares would constitute a violation by the Grantee or any other individual exercising the Incentive Award, or the Company, of any provision of any law or regulation of any governmental authority, including without limitation, any federal or state securities law or regulation. If at any time the Company shall determine, in its discretion, that the listing, registration or qualification of any Shares subject to an Incentive Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of Shares hereunder, no Shares may be issued or sold to the Grantee or any other individual pursuant to an Incentive Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Incentive Award. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Incentive Award or the issuance of Shares pursuant to the Plan to comply with any law or regulation of any governmental authority. As to any jurisdiction that expressly imposes the requirement that an Incentive Award shall not be exercisable until the Shares covered thereby are registered or are exempt from registration, the exercise of such Incentive Award (under circumstances in which the laws of such jurisdiction apply) shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

(b) Securities Act Rule 701. If no class of the Company's securities is registered under Section 12 of the Exchange Act, then unless otherwise determined by the Committee, grants of Incentive Awards to Rule 701 Grantees (as defined below) and issuances of the underlying shares of Common Stock, if any, on the exercise or

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conversion of such Incentive Awards are intended to comply with all applicable conditions of Securities Act Rule 701 (Rule 701), including, without limitation, the restrictions as to the amount of securities that may be offered and sold in reliance on Rule 701, so as to qualify for an exemption from the registration requirements of the Securities Act. Any ambiguities or inconsistencies in the construction of an Incentive Award or the Plan shall be interpreted to give effect to such intention. In accordance with Rule 701, each Grantee shall receive a copy of the Plan on or before the date an Incentive Award is granted to him, as well as the additional disclosure required by Rule 701 (e) if the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds \$5,000,000 as determined under Rule 701(e). If Rule 701 (or any successor provision) is amended to eliminate or otherwise modify any of the requirements specified in Rule 701, then the provisions of this Section 7.8(b) shall be interpreted and construed in accordance with Rule 701 as so amended. For purposes of this Section 7.8(b), as determined in accordance with Rule 701, Rule 701 Grantees shall mean any Grantee other than a director of the Company, the Company's chairman, CEO, president, chief financial officer, controller and any vice president of the Company, and any other key employee of the Company who generally has access to financial and other business related information and possesses sufficient sophistication to understand and evaluate such information.

7.9 Rule 16b-3 Securities Law Compliance for Insiders

If the Company is a Publicly Held Corporation, transactions under the Plan with respect to Insiders are intended to comply with all applicable conditions of Rule 16b-3 under the Exchange Act to the extent Section 16 of the Exchange Act is applicable to the Company. Any ambiguities or inconsistencies in the construction of an Incentive Award or the Plan shall be interpreted to give effect to such intention, and to the extent any provision of the Plan or action by the Committee fails to so comply, it shall be deemed null and void to the extent permitted by law and deemed advisable by the Committee in its discretion.

7.10 Compliance with Code Section 162(m) for Publicly Held Corporation

If the Company is a Publicly Held Corporation, unless otherwise determined by the Committee with respect to any particular Incentive Award, it is intended that the Plan shall comply fully with the applicable requirements so that any Incentive Awards subject to Section 162(m) that are granted to Covered Employees shall qualify for the Performance-Based Exception. If any provision of the Plan or an Incentive Agreement would disqualify the Plan or would not otherwise permit the Plan or Incentive Award to comply with the Performance-Based Exception as so intended, such provision shall be construed or deemed to be amended to conform to the requirements of the Performance-Based Exception to the extent permitted by applicable law and deemed advisable by the Committee; provided, however, no such construction or amendment shall have an adverse effect on the prior grant of an Incentive Award or the economic value to a Grantee of any outstanding Incentive Award.

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7.11 Compliance with Code Section 409A

It is intended that Incentive Awards granted under the Plan shall be exempt from, or if not so exempt, in compliance with, Code Section 409A, unless otherwise determined by the Committee at the time of grant. In that respect, the Company, by action of its Board, reserves the right to amend the Plan, and the Board and the Committee each reserve the right to amend any outstanding Incentive Agreement, to the extent deemed necessary or appropriate either to exempt such Incentive Award from taxation under Section 409A or to comply with the requirements of Section 409A to avoid additional taxation thereunder. Further, Grantees who are Specified Employees (as defined under Section 409A), shall be required to delay payment of an Incentive Award for six (6) months after separation from service (as defined under Section 409A), but only to the extent such Incentive Award is subject to taxation under Section 409A and such delay is required thereunder.

7.12 Notices

(a) Notice From Insiders to Secretary of Change in Beneficial Ownership. To the extent Section 16 of the Exchange Act is applicable to the Company, within two business days after the date of a change in beneficial ownership of the Common Stock issued or delivered pursuant to this Plan, an Insider should report to the Secretary of the Company any such change to the beneficial ownership of Common Stock that is required to be reported with respect to such Insider under Rule 16(a)-3 promulgated pursuant to the Exchange Act. Whenever reasonably feasible, Insiders will provide the Committee with advance notification of such change in beneficial ownership.

(b) Notice to Insiders and Securities and Exchange Commission. To the extent applicable, the Company shall provide notice to any Insider, as well as to the Securities and Exchange Commission, of any blackout period, as defined in Section 306(a)(4) of the Sarbanes-Oxley Act of 2002, in any case in which Insider is subject to the requirements of Section 304 of said Act in connection with such blackout period.

7.13 Pre-Clearance Agreement with Brokers

Notwithstanding anything in the Plan to the contrary, no Shares issued pursuant to the Plan will be delivered to a broker or dealer that receives such Shares for the account of an Insider unless and until the broker or dealer enters into a written agreement with the Company whereby such broker or dealer agrees to report immediately to the Secretary of the Company (or other designated person) a change in the beneficial ownership of such Shares.

7.14 Successors to Company

All obligations of the Company under the Plan with respect to Incentive Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

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7.15 Miscellaneous Provisions

(a) No Employee, Consultant, Outside Director, or other person shall have any claim or right to be granted an Incentive Award under the Plan. Neither the Plan, nor any action taken hereunder, shall be construed as giving any Employee, Consultant, or Outside Director any right to be retained in the Employment or other service of the Company or any Parent or Subsidiary.

(b) The expenses of the Plan shall be borne by the Company.

(c) By accepting any Incentive Award, each Grantee and each person claiming by or through him shall be deemed to have indicated his acceptance of the Plan.

(d) The proceeds received from the sale of Common Stock pursuant to the Plan shall be used for general corporate purposes of the Company.

7.16 Severability

In the event that any provision of this Plan shall be held illegal, invalid or unenforceable for any reason, such provision shall be fully severable, but shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if the illegal, invalid, or unenforceable provision was not included herein.

7.17 Gender, Tense and Headings

Whenever the context so requires, words of the masculine gender used herein shall include the feminine and neuter, and words used in the singular shall include the plural. Section headings as used herein are inserted solely for convenience and reference and constitute no part of the interpretation or construction of the Plan.

7.18 Governing Law

The Plan shall be interpreted, construed and constructed in accordance with the laws of the State of Texas without regard to its conflicts of law provisions, except as may be superseded by applicable laws of the United States.

[Signature page follows.]

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IN WITNESS WHEREOF, the Company has caused this Plan to be duly executed in its name and on its behalf by its duly authorized officer, on this ___ day of _____, 2010, to be effective as of the Effective Date.

ASTROTECH CORPORATION

By:

Name:

Title:

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ANNUAL MEETING OF ASTROTECH CORPORATION Date: March 5, 2010 Time: 9:00 A.M. (Central Time)
Place: 401 Congress Ave, Suite 1650, Austin, TX 78701 NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIAL: THE NOTICE OF MEETING, PROXY STATEMENT AND PROXY CARD ARE AVAILABLE AT WWW.PROXYDOCS.COM/ASTC. Please make your marks like this: Use dark black pencil or pen only Board of Directors recommends a vote FOR proposals 1, 2 and 3. 1: Election of Directors 01 Thomas B. Pickens, III 04 Sha-Chelle Manning 02 Mark Adams 05 Lance W. Lord 03 John A. Oliva 06 William F. Readdy Vote For Withhold Vote *Vote For All Nominees From All Nominees All Except *INSTRUCTIONS: To withhold authority to vote for any nominee, mark the "Exception" box and write the number(s) in the space provided to the right. Directors Recommend For Against Abstain 2: Ratify PMB Helin Donovan, LLP as the For independent auditor. 3: Adoption of the 2010 Stock Incentive Plan. For To attend the meeting and vote your shares in person, please mark this box .. Authorized Signatures - This section must be completed for your Instructions to be executed. Please Sign Here Please Date Above Please Sign Here Please Date Above Please sign exactly as your name(s) appears on your stock certificate. If held in joint tenancy, all persons should sign. Trustees, administrators, etc., should include title and authority. Corporations should provide full name of corporation and title of authorized officer signing the proxy. Please separate carefully at the perforation and return just this portion in the envelope provided. Annual Meeting of Astrotech Corporation to be held on Friday, March 5, 2010 for Holders as of January 15, 2010 This proxy is being solicited on behalf of the Board of Directors VOTED BY: INTERNET TELEPHONE Go To 866-390-5376 www.proxypush.com/astc Cast your vote online. UUse any touch-tone telephone. U OR View Meeting Documents. UHave your Proxy Card ready. U Follow the simple recorded instructions. MAIL OR UMark, sign and date your Proxy Card. U Detach your Proxy Card. U Return your Proxy Card in the postage-paid envelope provided. The undersigned hereby appoints, Thomas B. Pickens, III and Mark Adams as the true and lawful attorneys of the undersigned, with full power of substitution and revocation, and authorizes them, and each of them, to vote all the shares of capital stock of Astrotech Corporation which the undersigned is entitled to vote at said meeting and any adjournment thereof upon the matters specified and upon such other matters as may be properly brought before the meeting or any postponement or adjournment thereof, conferring authority upon such true and lawful attorneys to vote in their discretion on such other matters as may properly come before the meeting and revoking any proxy heretofore given. THE SHARES REPRESENTED BY THIS PROXY WILL BE VOTED AS DIRECTED, IF NO DIRECTION IS GIVEN, SHARES WILL BE VOTED FOR THE ELECTION OF THE DIRECTORS IN ITEM 1 AND FOR THE PROPOSALS IN ITEMS 2, 3. All votes must be received by 5:00 P.M., Eastern Time, March 4, 2010. PROXY TABULATOR FOR ASTROTECH CORPORATION P.O. BOX 8016 CARY, NC 27512-9903 EVENT # CLIENT #