



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

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**FORM 8-K**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): **April 27, 2006 (April 26, 2006)**

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**GTx, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**Delaware**

(State or Other Jurisdiction of  
Incorporation)

**000-50549**

(Commission File Number)

**62-1715807**

(IRS Employer Identification No.)

**3 N. Dunlap Street**

**Van Vleet Building**

**Memphis, Tennessee 38163**

(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: **(901) 523-9700**

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

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

[Item 1.01. Entry into a Material Definitive Agreement.](#)

[Item 9.01. Financial Statements and Exhibits.](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[EX-10.1 AMENDED AND RESTATED STOCK OPTION PLAN](#)

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## Table of Contents

### **Item 1.01. Entry into a Material Definitive Agreement.**

On April 26, 2006, at the 2006 Annual Meeting of Stockholders (the “2006 Annual Meeting”) of GTx, Inc. (“GTx”), the stockholders approved the GTx, Inc. Amended and Restated 2004 Non-Employee Directors’ Stock Option Plan (the “Amended Directors’ Plan”). The Amended Directors’ Plan was adopted by the Board of Directors of GTx (the “Board”) on February 15, 2006, subject to stockholder approval, and is effective as of April 26, 2006.

The Amended Directors’ Plan is an amendment and restatement of the GTx, Inc. 2004 Non-Employee Directors’ Stock Option Plan (the “Prior Plan”). The Amended Directors’ Plan provides for the automatic grant of nonstatutory stock options to purchase shares of common stock to GTx’s non-employee directors who do not own more than ten percent of the combined voting power of GTx’s then outstanding securities. The aggregate number of shares of common stock that may be issued pursuant to options granted under the Amended Directors’ Plan is 268,000 shares, plus an annual increase for ten years beginning on January 1, 2007 and ending on (and including) January 1, 2016, equal to the lesser of 100,000 shares or the number of shares subject to options granted during the prior calendar year. However, the Board has the authority to designate a smaller number of shares by which the authorized number of shares of common stock will be increased each year. The Board administers the Amended Directors’ Plan and may not delegate administration of the Amended Directors’ Plan to a Board committee.

Pursuant to the terms of the Amended Directors’ Plan, any individual who first becomes a non-employee director automatically will be granted an option to purchase shares of common stock (an “Initial Grant”). The number of shares subject to each Initial Grant shall initially be 10,000 shares, provided that the number of shares may be increased or decreased by the Board in its sole discretion. Any individual who is serving as a non-employee director on the day following an annual meeting of GTx’s stockholders, commencing with the day following the 2006 Annual Meeting, automatically will be granted an option to purchase shares of common stock on that date (an “Annual Grant”); *provided, however*, that if the individual has not been serving as a non-employee director for the entire period since the preceding annual meeting, the number of shares subject to such individual’s Annual Grant will be reduced *pro rata* for each full month prior to the date of grant during which such individual did not serve as a non-employee director. The number of shares subject to each Annual Grant shall initially be 8,000 shares, provided that the number of shares may be increased or decreased by the Board in its sole discretion. Any change by the Board in the number of shares subject to an Annual Grant shall be applicable to all eligible non-employee directors receiving an Annual Grant on a particular grant date. The shares subject to each Initial Grant and each Annual Grant vest in a series of three successive equal annual installments measured from the date of grant, so that each Initial Grant and each Annual Grant will be fully vested three years after the date of grant. In the event of certain corporate transactions, as defined in the Amended Directors’ Plan, all outstanding options under the Amended Directors’ Plan may be assumed or substituted for by any surviving or acquiring entity. If the surviving or acquiring entity elects not to assume or substitute for such options, then (i) with respect to any such options that are held by optionees then performing services for the Company or its affiliates, the vesting and exercisability of such options will be accelerated in full and such options will be terminated if not exercised prior to the effective date of the corporate transaction, and (ii) all other outstanding options will terminate if not exercised prior to the effective date of the corporate transaction. If a specified change in control transaction occurs, as defined in the Amended Directors’ Plan, then the vesting and exercisability of the optionee’s options will be accelerated in full immediately prior to (and contingent upon) the effectiveness of the transaction. If an optionee is required to resign his or her position as a non-employee director as a condition of the transaction, the vesting and exercisability of the optionee’s options will be accelerated in full immediately prior to the effectiveness of such resignation.

A more detailed summary of the material features of the Amended Directors’ Plan is set forth in GTx’s definitive proxy statement for the 2006 Annual Meeting, filed with the Securities and Exchange Commission (the “SEC”) on March 8, 2006 (the “Proxy Statement”). The foregoing summary and the summary in the Proxy Statement do not purport to be complete and are qualified in their entirety by reference to the full text of the Amended Directors’ Plan, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	GTx, Inc. Amended and Restated 2004 Non-Employee Directors’ Stock Option Plan.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**GTx, Inc.**

By: /s/ HENRY P. DOGGRELL

Henry P. Doggrell,  
Vice President, General Counsel/Secretary

Dated: April 27, 2006

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
10.1	GTx, Inc. Amended and Restated 2004 Non-Employee Directors' Stock Option Plan.

GTx, INC.  
AMENDED AND RESTATED 2004 NON-EMPLOYEE  
DIRECTORS' STOCK OPTION PLAN  
ADOPTED JANUARY 14, 2004  
APPROVED BY STOCKHOLDERS JANUARY 14, 2004  
AMENDED AND RESTATED ON FEBRUARY 15, 2006  
APPROVED BY STOCKHOLDERS April 26, 2006

1. PURPOSES.

- (a) **Amendment and Restatement.** This Plan amends and restates the GTx, Inc. 2004 Non-Employee Directors' Stock Option Plan adopted January 14, 2004 (the "**Prior Plan**"). All outstanding Options granted under the Prior Plan shall remain subject to the terms of the Prior Plan. All Options granted subsequent to the Effective Date shall be subject to the terms of this Plan (as an amendment and restatement of the Prior Plan).
- (b) **Eligible Option Recipients.** The persons eligible to receive Options are the Non-Employee Directors of the Company.
- (c) **Available Options.** The purpose of the Plan is to provide a means by which Non-Employee Directors may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Nonstatutory Stock Options.
- (d) **General Purpose.** The Company, by means of the Plan, seeks to retain the services of its Non-Employee Directors, to secure and retain the services of new Non-Employee Directors and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

- (a) "**Accountant**" means the independent public accountants of the Company.
  - (b) "**Affiliate**" means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.
  - (c) "**Annual Grant**" means an Option granted annually to all Non-Employee Directors who meet the specified criteria pursuant to Section 6(b).
  - (d) "**Annual Meeting**" means the annual meeting of the stockholders of the Company.
  - (e) "**Board**" means the Board of Directors of the Company.
  - (f) "**Capitalization Adjustment**" has the meaning ascribed to that term in Section 11(a).
  - (g) "**Change in Control**" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:
    - (i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because the level of Ownership held by any Exchange Act Person (the "Subject Person") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the
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Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

- (ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction;
  - (iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur;
  - (iv) there is consummated a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the Company immediately prior to such sale, lease, license or other disposition; or
  - (v) individuals who, on the date this Plan is adopted by the Board, are members of the Board (the **“Incumbent Board”**) cease for any reason to constitute at least a majority of the members of the Board; (provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board).
- (h) **“Code”** means the Internal Revenue Code of 1986, as amended.
- (i) **“Common Stock”** means the common stock of the Company.
- (j) **“Company”** means GTx, Inc., a Delaware corporation.
- (k) **“Consultant”** means any person, including an advisor, (i) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (ii) serving as a member of the Board of Directors of an Affiliate. However, the term **“Consultant”** shall not include either Directors of the Company who are not compensated by the Company for their services as Directors or Directors of the Company who are merely paid a director’s fee by the Company for their services as Directors.
- (l) **“Continuous Service”** means that the Optionholder’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Optionholder’s Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Optionholder renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Optionholder renders such service, provided that there is no interruption or termination of the Optionholder’s Continuous Service. For example, a change in status from a Non-Employee Director of the Company to a Consultant of an Affiliate or an Employee of the Company will not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.
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- (m) **“Corporate Transaction”** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:
- (i) a sale or other disposition of all or substantially all, as determined by the Board in its discretion, of the consolidated assets of the Company and its Subsidiaries;
  - (ii) a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;
  - (iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or
  - (iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.
- (n) **“Director”** means a member of the Board of Directors of the Company.
- (o) **“Disability”** means the inability of a person, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of that person’s position with the Company or an Affiliate of the Company because of the sickness or injury of the person.
- (p) **“Effective Date”** means the date that this Plan (as an amendment and restatement of the Prior Plan) is approved by the stockholders of the Company.
- (q) **“Employee”** means any person employed by the Company or an Affiliate. Service as a Director or payment of a director’s fee by the Company or an Affiliate shall not be sufficient to constitute “employment” by the Company or an Affiliate.
- (r) **“Entity”** means a corporation, partnership or other entity.
- (s) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended.
- (t) **“Exchange Act Person”** means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” shall not include (A) the Company or any Subsidiary of the Company, (B) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company.
- (u) **“Fair Market Value”** means, as of any date, the value of the Common Stock determined as follows:
- (i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.
  - (ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board.
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- (v) **“Initial Grant”** means an Option granted to a Non-Employee Director who meets the specified criteria pursuant to Section 6(a).
- (w) **“Non-Employee Director”** means a Director who is not an Employee.
- (x) **“Nonstatutory Stock Option”** means an Option not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.
- (y) **“Officer”** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.
- (z) **“Option”** means a Nonstatutory Stock Option granted pursuant to the Plan.
- (aa) **“Option Agreement”** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.
- (bb) **“Optionholder”** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.
- (cc) **“Own,” “Owned,” “Owner,” “Ownership”** A person or Entity shall be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.
- (dd) **“Plan”** means this GTx, Inc. Amended and Restated 2004 Non-Employee Directors’ Stock Option Plan.
- (ee) **“Rule 16b-3”** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.
- (ff) **“Securities Act”** means the Securities Act of 1933, as amended.
- (gg) **“Subsidiary”** means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

### 3. ADMINISTRATION.

- (a) **Administration by Board.** The Board shall administer the Plan. The Board may not delegate administration of the Plan to a committee.
  - (b) **Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:
    - (i) To determine the provisions of each Option to the extent not specified in the Plan.
    - (ii) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
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(iii) To amend the Plan or an Option as provided in Section 12.

(iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan.

(c) **Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

#### 4. SHARES SUBJECT TO THE PLAN.

(a) **Share Reserve.** Subject to the provisions of Section 11 relating to adjustments upon changes in the Common Stock, the Common Stock that may be issued pursuant to Options shall not exceed in the aggregate two hundred sixty-eight thousand (268,000) shares of Common Stock, plus an annual increase for ten years beginning on January 1, 2007 and ending on (and including) January 1, 2016 equal to the lesser of (i) the number of shares of Common Stock subject to Options granted during the prior calendar year, or (ii) one hundred thousand (100,000) shares of Common Stock. Notwithstanding the foregoing, the Board may act, prior to the first day of any fiscal year of the Company, to increase the share reserve by such number of shares of Common Stock as the Board shall determine, which number shall be less than each of (i) and (ii).

(b) **Reversion of Shares to the Share Reserve.** If any Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the shares of Common Stock not acquired under such Option shall revert to and again become available for issuance under the Plan.

(c) **Source of Shares.** The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

#### 5. ELIGIBILITY.

The Options, as set forth in Section 6, automatically shall be granted under the Plan to all Non-Employee Directors who meet the criteria specified in Section 6. Notwithstanding the foregoing, a Non-Employee Director shall not be eligible for the grant of an Option under the Plan if the Non-Employee Director is the Owner, directly or indirectly, of securities of the Company representing more than ten percent (10%) of the combined voting power of the Company's then outstanding securities.

#### 6. NON-DISCRETIONARY GRANTS.

(a) **Initial Grants.** Without any further action of the Board, each person who after the Effective Date is elected or appointed for the first time to be a Non-Employee Director automatically shall, upon the date of his or her initial election or appointment to be a Non-Employee Director, be granted an Initial Grant on the terms and conditions set forth herein.

(b) **Annual Grants.** Without any further action of the Board, on the day following each Annual Meeting, commencing with the Annual Meeting in 2006, each person who is then a Non-Employee Director automatically shall be granted an Annual Grant on the terms and conditions set forth herein; *provided, however*, that if the person has not been serving as a Non-Employee Director for the entire period since the preceding Annual Meeting, then the number of shares subject to such Annual Grant shall be reduced *pro rata* for each full month prior to the date of grant during which such person did not serve as a Non-Employee Director.

(c) **Number of Shares Subject to Initial Grants and Annual Grants.** The number of shares of Common Stock subject to each Initial Grant and each Annual Grant shall be determined as follows:

(i) The number of shares of Common Stock subject to each Initial Grant shall initially be ten thousand (10,000) shares of Common Stock, which such number of shares may be increased or decreased by the Board in its sole discretion.

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- (ii) The number of shares of Common Stock subject to each Annual Grant shall initially be eight thousand (8,000) shares of Common Stock, which such number of shares may be increased or decreased by the Board in its sole discretion; *provided, however*, that any increase or decrease in number of shares subject to an Annual Grant shall be applicable to all Non-Employee Directors receiving an Annual Grant on a particular grant date.

## 7. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as required by the Plan. Each Option shall contain such additional terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. Each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

- (a) **Term.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.
  - (b) **Exercise Price.** The exercise price of each Option shall be one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted.
  - (c) **Consideration.** The purchase price of stock acquired pursuant to an Option may be paid, to the extent permitted by applicable law, in any combination of (i) cash or check, (ii) delivery to the Company of other Common Stock or (iii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. The purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes).
  - (d) **Transferability.** An Option is transferable by will or by the laws of descent and distribution. An Option also may be transferable upon written consent of the Company if, at the time of transfer, a Form S-8 registration statement under the Securities Act is available for the exercise of the Option and the subsequent resale of the underlying securities. In addition, an Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.
  - (e) **Vesting.** Options shall vest as follows:
    - (i) Initial Grants: 1/3rd of the shares shall vest annually on the anniversary of the date of grant, so that the Initial Grant is fully vested after 3 years.
    - (ii) Annual Grants: 1/3rd of the shares shall vest annually on the anniversary of the date of grant, so that the Annual Grant is fully vested after 3 years.
  - (f) **Early Exercise.** The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate. The Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option.
  - (g) **Termination of Continuous Service.** In the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination) but
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only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If the Optionholder's Continuous Service terminates either as a condition of a Change in Control or upon the effectiveness of a Change in Control then the Optionholder may exercise the outstanding vested portion his or her Option within such period of time ending on the earlier of (i) the date twelve (12) months following the termination of the Optionholder's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

- (h) **Extension of Termination Date.** If the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option as set forth in the Option Agreement or (ii) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.
- (i) **Disability of Optionholder.** In the event an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.
- (j) **Death of Optionholder.** In the event (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the three-month period after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise the Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death, but only within the period ending on the earlier of (1) the date eighteen (18) months following the date of death or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

#### 8. SECURITIES LAW COMPLIANCE.

The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Options and to issue and sell shares of Common Stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Option or any stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

#### 9. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

#### 10. MISCELLANEOUS.

- (a) **Stockholder Rights.** No Optionholder shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such Optionholder has satisfied all requirements for exercise of the Option pursuant to its terms.
  - (b) **No Service Rights.** Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Optionholder any right to continue to serve the Company as a Non-Employee
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Director or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

- (c) **Investment Assurances.** The Company may require an Optionholder, as a condition of exercising or acquiring stock under any Option, (i) to give written assurances satisfactory to the Company as to the Optionholder's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (ii) to give written assurances satisfactory to the Company stating that the Optionholder is acquiring the stock subject to the Option for the Optionholder's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (1) the issuance of the shares upon the exercise or acquisition of stock under the Option has been registered under a then currently effective registration statement under the Securities Act or (2) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.
- (d) **Withholding Obligations.** The Optionholder may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of stock under an Option by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Optionholder by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Optionholder as a result of the exercise or acquisition of stock under the Option; provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock.

#### 11. ADJUSTMENTS UPON CHANGES IN COMMON STOCK.

- (a) **Capitalization Adjustments.** If any change is made in, or other events occur with respect to, the stock subject to the Plan, or subject to any Option, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company (each a "Capitalization Adjustment")), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject both to the Plan pursuant to Section 4 and to the nondiscretionary Options specified in Section 6, and the outstanding Options will be appropriately adjusted in the class(es) and number of securities and price per share of stock subject to such outstanding Options. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)
  - (b) **Dissolution or Liquidation.** In the event of a dissolution or liquidation of the Company, then all outstanding Options shall terminate immediately prior to the completion of such dissolution or liquidation.
  - (c) **Corporate Transaction.** In the event of a Corporate Transaction, any surviving corporation or acquiring corporation may assume any or all Options outstanding under the Plan or may substitute similar stock options for Options outstanding under the Plan (it being understood that similar stock options include, but are not limited to, options to acquire the same consideration paid to the stockholders or the Company, as the case may be, pursuant to the Corporate Transaction). In the event
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that any surviving corporation or acquiring corporation does not assume any or all such outstanding Options or substitute similar stock options for such outstanding Options, then with respect to Options that have been neither assumed nor substituted and that are held by Optionholders whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction, the vesting of such Options (and, if applicable, the time at which such Options may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and the Options shall terminate if not exercised (if applicable) at or prior to such effective time. With respect to any other Options outstanding under the Plan that have been neither assumed nor substituted, the vesting of such Options (and, if applicable, the time at which such Options may be exercised) shall not be accelerated unless otherwise provided in Section 11(d) or in a written agreement between the Company or any Affiliate and the holder of such Options, and such Options shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction.

- (d) **Change in Control.** If a Change in Control occurs, then, immediately prior to such Change in Control, the Optionholder's Options shall become fully vested and exercisable. In the event that an Optionholder is required to resign his or her position as a Non-Employee Director as a condition of a Change in Control, the outstanding Options of such Optionholder shall become fully vested and exercisable immediately prior to the effectiveness of such resignation.
- (e) **Parachute Payments.** If the acceleration of the vesting and exercisability of Options provided for in Section 11(c), together with payments and other benefits of an Optionholder, (collectively, the "Payment") (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, or any comparable successor provisions, and (ii) but for this Section 11(e) would be subject to the excise tax imposed by Section 4999 of the Code, or any comparable successor provisions (the "Excise Tax"), then such Payment shall be either (1) provided to such Optionholder in full, or (2) provided to such Optionholder as to such lesser extent that would result in no portion of such Payment being subject to the Excise Tax, whichever of the foregoing amounts, when taking into account applicable federal, state, local and foreign income and employment taxes, the Excise Tax, and any other applicable taxes, results in the receipt by such Optionholder, on an after-tax basis, of the greatest amount of the Payment, notwithstanding that all or some portion of the Payment may be subject to the Excise Tax.

Unless the Company and such Optionholder otherwise agree in writing, any determination required under this Section 11(e) shall be made in writing in good faith by the Accountant. If a reduction in the Payment is to be made as provided above, reductions shall occur in the following order unless the Optionholder elects in writing a different order (provided, however, that such election shall be subject to Company approval if made on or after the date that triggers the Payment or a portion thereof): reduction of cash payments; cancellation of accelerated vesting of Options; reduction of employee benefits. If acceleration of vesting of Options is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of date of grant of Options (i.e., earliest granted Option cancelled last) unless the Optionholder elects in writing a different order for cancellation.

For purposes of making the calculations required by this Section 11(e), the Accountant may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Code and other applicable legal authority. The Company and the Optionholder shall furnish to the Accountant such information and documents as the Accountant may reasonably request in order to make such a determination. The Company shall bear all costs the Accountant may reasonably incur in connection with any calculations contemplated by this Section 11(e).

If, notwithstanding any reduction described above, the Internal Revenue Service (the "IRS") determines that the Optionholder is liable for the Excise Tax as a result of the Payment, then the Optionholder shall be obligated to pay back to the Company, within thirty (30) days after a final IRS determination or, in the event that the Optionholder challenges the final IRS determination, a final judicial determination, a portion of the Payment equal to the "Repayment Amount." The Repayment Amount with respect to the Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Optionholder's net after-tax proceeds with respect to the Payment (after taking into account the payment of the Excise Tax and all other applicable taxes imposed on the Payment) shall be maximized. The Repayment Amount with respect to the Payment shall be zero if a Repayment Amount of more than zero would not result in the Optionholder's net after-tax proceeds with respect to the Payment being maximized. If the Excise Tax is not eliminated pursuant to this paragraph, the Optionholder shall pay the Excise Tax.

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Notwithstanding any other provision of this Section 11(e), if (i) there is a reduction in the Payment as described above, (ii) the IRS later determines that the Optionholder is liable for the Excise Tax, the payment of which would result in the maximization of the Optionholder's net after-tax proceeds of the Payment (calculated as if the Payment had not previously been reduced), and (iii) the Optionholder pays the Excise Tax, then the Company shall pay or otherwise provide to the Optionholder that portion of the Payment that was reduced pursuant to this Section 11(e) contemporaneously or as soon as administratively possible after the Optionholder pays the Excise Tax so that the Optionholder's net after-tax proceeds with respect to the Payment are maximized.

If the Optionholder either (i) brings any action to enforce rights pursuant to this Section 11(e), or (ii) defends any legal challenge to his or her rights under this Section 11(e), the Optionholder shall be entitled to recover attorneys' fees and costs incurred in connection with such action, regardless of the outcome of such action; provided, however, that if such action is commenced by the Optionholder, the court finds that the action was brought in good faith.

#### 12. AMENDMENT OF THE PLAN AND OPTIONS.

- (a) **Amendment of Plan.** The Board, at any time and from time to time, may amend the Plan. However, except as provided in Section 11 relating to adjustments upon changes in Common Stock, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of applicable laws.
- (b) **Stockholder Approval.** The Board, in its sole discretion, may submit any other amendment to the Plan for stockholder approval.
- (c) **No Impairment of Rights.** Rights under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.
- (d) **Amendment of Options.** The Board, at any time, and from time to time, may amend the terms of any one or more Options; provided, however, that the rights under any Option shall not be impaired by any such amendment unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.

#### 13. TERMINATION OR SUSPENSION OF THE PLAN.

- (a) **Plan Term.** The Board may suspend or terminate the Plan at any time. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.
- (b) **No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Option granted while the Plan is in effect except with the written consent of the Optionholder.

#### 14. EFFECTIVE DATE OF PLAN.

This Plan (as an amendment and restatement of the Prior Plan) shall become effective on the Effective Date.

#### 15. CHOICE OF LAW.

The law of the state of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.