

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **April 2, 2013**

**SPHERIX® INCORPORATED**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-5576**  
(Commission  
File Number)

**52-0849320**  
(I.R.S. Employer  
Identification No.)

**7927 Jones Branch Drive, Suite 3125**  
**Tysons Corner, VA**  
(Address of principal executive offices)

**22102**  
(Zip Code)

Registrant's telephone number, including area code **703-992-9260**

**Not Applicable**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- 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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## Forward-Looking Statements

This Current Report on Form 8-K and other written and oral statements made from time to time by us may contain so-called “forward-looking statements,” all of which are subject to risks and uncertainties. Forward-looking statements can be identified by the use of words such as “expects,” “plans,” “will,” “forecasts,” “projects,” “intends,” “estimates,” and other words of similar meaning. One can identify them by the fact that they do not relate strictly to historical or current facts. These statements are likely to address our growth strategy, financial results and product and development programs. One must carefully consider any such statement and should understand that many factors could cause actual results to differ from our forward looking statements. These factors may include inaccurate assumptions and a broad variety of other risks and uncertainties, including some that are known and some that are not. No forward looking statement can be guaranteed and actual future results may vary materially.

Information regarding market and industry statistics contained in this Current Report on Form 8-K is included based on information available to us that we believe is accurate. It is generally based on industry and other publications that are not produced for purposes of securities offerings or economic analysis. We have not reviewed or included data from all sources. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and the additional uncertainties accompanying any estimates of future market size, revenue and market acceptance of products and services. We do not assume any obligation to update any forward-looking statement. As a result, investors should not place undue reliance on these forward-looking statements.

### Item 1.01 Entry Into a Material Definitive Agreement.

On April 2, 2013, Spherix Incorporated, a Delaware corporation (“we” or the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with its wholly owned subsidiary, Nuta Technology Corp., a Virginia corporation (“Nuta”) and North South Holdings, Inc., a Delaware corporation (“North South”), the owner or assignee of certain patents, licenses and applications (the “North South Intellectual Property”), and the shareholders of North South (the “North South Shareholders”). Upon closing of the transaction contemplated under the Merger Agreement (the “Merger”), North South will merge with and into Nuta with Nuta as the surviving corporation. Nuta will continue its operations in the State of Virginia as the record owner of the North South Intellectual Property. The closing of the Merger is subject to customary closing conditions, including the receipt of a fairness opinion that the Merger Consideration (as defined below) is fair to stockholders and the Company from a financial point of view, based on, among other things, the North South Intellectual Property assets, and the approval of the Company’s shareholders holding a majority of the outstanding voting capital of the Company to issue the Merger Consideration pursuant to NASDAQ listing standards.

Pursuant to the terms and conditions of the Merger, at the closing of the Merger, an aggregate of 500 issued and outstanding shares of North South’s common stock will be converted into the right to receive an aggregate of 118,483 shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”) and 500 shares of North South’s Series A Preferred Stock and 128 shares of North South’s Series B Preferred Stock issued and outstanding will be converted into the right to receive an aggregate of 1,488,152 shares of the Company’s newly designated Series D Convertible Preferred Stock, par value \$0.0001 per share (the “Series D Preferred Stock”), which is convertible into shares of the Company’s Common Stock on a one-for-ten basis (collectively with the 118,483 shares of Common Stock, the “Merger Consideration”).

At the effective time of the Merger, from the Merger Consideration, 150,000 shares of the Series D Preferred Stock (the “Escrow Shares”) shall be delivered to an escrow agent and shall be held pursuant to an escrow agreement to secure the Company from certain claims that may arise with respect to the representations, warranties, covenants or indemnification obligations of the North South Shareholders for a period of twelve (12) months following the closing of the Merger. The Escrow Shares are the sole remedy for indemnifiable losses payable under the Merger Agreement.

The foregoing description of the Merger and the Merger Agreement, the Series D Preferred Stock and related transactions does not purport to be complete and is qualified in its entirety by reference to the complete text of the Merger Agreement, which is filed as Exhibit 10.1 hereto and the text of the Series D Preferred Stock Certificate of Designation, which is filed as Exhibit 3.1 hereto, each of which is incorporated herein by reference.

**Changes to the Business.** Following the closing of the Merger, through our wholly owned subsidiary, Nuta, as the owner of North South Intellectual Property, we intend to expand our activities constituting the commercialization and development of intellectual property assets. Our activities will generally include the acquisition and development of patents through internal or external research and development. In addition, we will seek to acquire existing rights to intellectual property through acquisitions of already issued patents and pending patent applications, both in the United States and abroad. We may alone or in conjunction with others develop products and processes associated

with our intellectual property and license our intellectual property to others seeking to develop products or processes or whose products or processes infringe our intellectual property rights through legal processes.

**Accounting Treatment.** The Merger will be accounted for as an acquisition of assets rather than a business pursuant to Financial Accounting Standards Board Accounting Standards Codification 805-50-30 “Business Combinations”. Accordingly, assets acquired through a transaction that is not a business combination shall be measured based on the cash consideration paid plus either the fair value of the non-cash consideration given or the fair value of the assets acquired, whichever is more clearly evident.

Following the Merger, we will continue to be a “smaller reporting company,” as defined in Item 10(f)(1) of Regulation S-K, as promulgated by the SEC.

## **Description of North South**

### **General – Business Strategy**

North South is the owner or assignee of certain patents, licenses and applications, as further described herein (the “North South Intellectual Property”). Subsequent to the consummation of the Merger, and through Nuta, its wholly-owned subsidiary, the Company will engage in an additional line of business. Through Nuta, we intend to become engaged in the commercialization and development of intellectual property assets that are not related to our historical business of drug development and services, although the scope of our intellectual property procurement and development will continue to include pharmaceutical and drug patents. Our activities will generally include the acquisition and development of patents through internal or external research and development. In addition, we will seek to acquire existing rights to intellectual property through acquisition of already issued patents and pending patent applications, both in the United States and abroad. We may alone, or in conjunction with others, develop products and processes associated with our intellectual property and license our intellectual property to others seeking to develop products or processes or whose products or processes infringe our intellectual property rights through legal processes.

North South owns a patent portfolio consisting of approximately 222 patents in wireless communications technology and pharmaceutical technology.

. We will likely need to raise additional capital to pursue our strategy. There is no assurance that we will succeed in our strategy or commercialize or realize value from the North South intellectual property or any additional intellectual property.

### *Key Elements of Business Strategy*

Our intellectual property acquisition, development and licensing business strategy will include the following key elements:

*Identify Emerging Growth Areas where Patented Technologies will Play a Vital Role*

Certain technologies become core technologies in the way products and services are manufactured, sold and delivered by companies across a wide array of industries. In conjunction with our partners, patent attorneys, and other patent sourcing professionals, we will identify core, patented technologies that have been or are anticipated to be widely adopted by third parties in connection with the manufacture or sale of products and services.

*Contact and Form Alliances with Owners of Core, Patented Technologies*

Often individual inventors and small companies have limited resources and/or expertise and are unable to effectively address the unauthorized use of their patented technologies. We will seek to enter into business agreements with owners of intellectual property that do not have experience or expertise in the areas of intellectual property licensing and enforcement, or that do not possess the in-house resources to devote to intellectual property licensing and enforcement activities, or that, for any number of strategic business reasons, desire to more efficiently and effectively outsource their intellectual property licensing and enforcement activities.

*Effectively and Efficiently Evaluate Patented Technologies for Acquisition, Licensing and Enforcement*

Subtleties in the language of a patent, recorded interactions with the patent office, and the evaluation of prior art and literature can make a significant difference in the potential licensing and enforcement revenue derived from a patent or patent portfolio. It is important to identify potential problem areas, if any, and determine whether potential problem areas can be overcome, prior to acquiring a patent portfolio or launching an effective licensing program.

Purchase or Acquire the Rights to Patented Technologies

After evaluation, we may elect to purchase the patented technology, or acquire the exclusive right to license the patented technology in all or in specific fields of use. The original owner of the patent or patent rights will typically receive an upfront acquisition payment, or retain the right to a portion of the gross revenues generated from a patent portfolio's licensing and enforcement program, or a combination of the two.

Successfully License and Enforce Patents with Significant Royalty Potential

As part of the patent evaluation process, significant consideration is also given to the identification of potential infringers, industries within which the potential infringers exist, longevity of the patented technology, and a variety of other factors that directly impact the magnitude and potential success of a licensing and enforcement program. We are seeking to hire individuals trained in commercialization and in evaluating potentially infringing technologies and in presenting the claims of our patents and demonstrating how they apply to companies we believe are using our technologies in their products or services. These presentations can take place in a non-adversarial business setting, but can also occur through the litigation process, if necessary. Ultimately, we will execute patent licensing arrangements with users of our patented technologies through licensing negotiations, without the filing of patent infringement litigation, or through the negotiation of license and settlement arrangements in connection with the filing of patent infringement litigation.

## **Intellectual Property and Patent Rights**

Upon closing of the Merger, our intellectual property will primarily be comprised of trade secrets, patented know-how, issued and pending patents, copyrights and technological innovation.

Upon closing of the Merger, we expect to own a portfolio comprised of approximately 222 patents in the United States. We also will continue to hold the intellectual property assets associated with our prior business seeking to develop drugs, pharmaceutical formulations and nutritional supplements.

### **Competition**

We expect to encounter significant competition in our new line of business from others seeking to commercialize and develop their intellectual property assets. Most of our competitors have much longer operating histories, and significantly greater financial and human resources, than we have. Entities such as Document Security Systems, Inc. (NYSE MKT:DSS), Vringo, Inc (NYSE MKT:VRNG), VirmetX Holding Corp (NYSE MKT:VHC), Acacia Research Corporation (NASDAQ:ACTG), Allied Security Trust, Altitude Capital Partners, Augme Technologies Inc. (OTCBB:AUGT) Intellectual Ventures, Ocean Tomo, RPX Corporation (NASDAQ:RPXC), Rembrandt IP Management and others presently market themselves as being in the business of creating, acquiring, licensing or leveraging the value of intellectual property assets. We expect others to enter the market as the true value of intellectual property is increasingly recognized and validated. In addition, competitors may seek to acquire the same or similar patents and technologies that we may seek to acquire, making it more difficult for us to realize the value of its assets.

### **Patent Enforcement Litigation**

We may often be required to engage in litigation to enforce our patents and patent rights. Nuta may become a party to ongoing patent enforcement related litigation of certain of the patents or patented technologies owned or controlled by Nuta after the closing of the Merger. Such litigation may become increasingly expensive and there is no assurance that Nuta will prevail in such litigation or that we will possess or be able to secure the financing necessary to engage in such activities, or that such financing, if available, will be able to be secured on attractive terms.

## **Risk Factors Relating to North South**

*An investment in our common stock involves a high degree of risk. Before deciding whether to invest in our common stock, you should consider carefully the risks discussed under the section captioned “Risk Factors” contained in our most recent annual report on Form 10-K, our quarterly reports on Form 10-Q and any current reports on Form 8-K on file with the SEC, all of which are incorporated herein by reference, and which may be amended, supplemented or superseded from time to time by other reports we file with the SEC.*

*There are numerous and varied risks, known and unknown, that may prevent us from achieving our goals. If any of these risks actually occur, our business, financial condition or results of operation may be materially adversely affected. In such case, the trading price of our common stock could decline and investors could lose all or part of their investment.*

***The Company intends to expand the focus of its business to commercializing, developing and monetizing intellectual property, including through licensing and enforcement. The Company may not be able to successfully monetize the patents which it acquires and thus it may fail to realize all of the anticipated benefits of such acquisition.***

There is no assurance that the Company will be able to successfully commercialize, acquire, develop or monetize the patent portfolio that it acquires from North South. The acquisition of the patents could fail to produce anticipated benefits, or could have other adverse effects that the Company does not currently foresee. Failure to successfully monetize these patent assets may have a material adverse effect on the Company’s business, financial condition and results of operations.

In addition, the acquisition of the patent portfolio is subject to a number of risks, including, but not limited to the following:

- There is a significant time lag between acquiring a patent portfolio and recognizing revenue from those patent assets. During that time lag, material costs are likely to be incurred that would have a negative effect on the Company’s results of operations, cash flows and financial position; and
- The integration of a patent portfolio will be a time consuming and expensive process that may disrupt the Company’s operations. If its integration efforts are not successful, the Company’s results of operations could be harmed. In addition, the Company may not achieve anticipated synergies or other benefits from such acquisition.

Therefore, there is no assurance that the monetization of the patent portfolios to be acquired will generate enough revenue to recoup the Company’s investment.

***The Company’s operating history makes it difficult to evaluate its current business and future prospects.***

The Company has, prior to the acquisition of North South, been involved in businesses primarily involving research and development in furtherance of drug and pharmaceutical products and processes, including nutritional supplements and related services. Prior to the consummation of the Merger, the Company’s business has consisted entirely of its biotechnology research and development unit. The Company not only has no operating history in executing its additional new business which includes, among other things, creating, commercializing, prosecuting, licensing, litigating or otherwise monetizing patent assets. The Company’s lack of operating history in this sector makes it difficult to evaluate its additional new business model and future prospects.

***The Company will be initially reliant exclusively on the patent assets it acquired from North South. If the Company is unable to commercialize, license or otherwise monetize such assets and generate revenue and profit through those assets or by other means, there is a significant risk that the Company’s business will fail.***

Upon closing of the Merger, the Company will acquire a portfolio of patent assets from North South that it plans to commercialize, license or otherwise monetize. If the Company’s efforts to generate revenue from such assets fail, the Company will have incurred significant losses and may be unable to acquire additional assets. If this occurs, the Company’s business will likely fail.

***Upon closing of the Merger and commencement of its additional new line of business, the Company may commence legal proceedings against certain companies, and the Company expects such litigation to be time-consuming and costly, which may adversely affect its financial condition and its ability to operate its business.***

To license or otherwise monetize its patent assets, which may constitute a significant focus of the Company's future activities, the Company may be required to commence legal proceedings against certain companies, pursuant to which the Company may allege that such companies infringe on one or more of the Company's patents. The Company's viability could be highly dependent on the outcome of this litigation, and there is a risk that the Company may be unable to achieve the results it desires from such litigation, which failure would harm the Company's business to a great degree. In addition, the defendants in this litigation are likely to be much larger than the Company and have substantially more resources than the Company does, which could make the Company's litigation efforts more difficult.

The Company anticipates that these legal proceedings may continue for several years and may require significant expenditures for legal fees and other expenses. Disputes regarding the assertion of patents and other intellectual property rights are highly complex and technical. Once initiated, the Company may be forced to litigate against others to enforce or defend its intellectual property rights or to determine the validity and scope of other parties' proprietary rights. The defendants or other third parties involved in the lawsuits in which the Company is involved may allege defenses and/or file counterclaims in an effort to avoid or limit liability and damages for patent infringement. If such defenses or counterclaims are successful, they may preclude the Company's ability to derive licensing revenue from the patents. A negative outcome of any such litigation, or one or more claims contained within any such litigation, could materially and adversely impact the Company's business. Additionally, the Company anticipates that its legal fees and other expenses will be material and will negatively impact the Company's financial condition and results of operations and may result in its inability to continue its business.

***The Company may seek to internally develop additional new inventions and intellectual property, which would take time and be costly. Moreover, the failure to obtain or maintain intellectual property rights for such inventions would lead to the loss of the Company's investments in such activities.***

Part of the Company's additional new business may include the internal development of new inventions or intellectual property that the Company will seek to monetize. However, this aspect of the Company's business would likely require significant capital and would take time to achieve. Such activities could also distract our management team from its present business initiatives, which could have a material and adverse effect on the Company's business. There is also the risk that the Company's initiatives in this regard would not yield any viable new inventions or technology, which would lead to a loss of the Company's investments in time and resources in such activities.

In addition, even if the Company is able to internally develop new inventions, in order for those inventions to be viable and to compete effectively, the Company would need to develop and maintain, and it would heavily rely upon, a proprietary position with respect to such inventions and intellectual property. However, there are significant risks associated with any such intellectual property the Company may develop principally including the following:

- patent applications the Company may file may not result in issued patents or may take longer than the Company expects to result in issued patents;
- the Company may be subject to interference proceedings;
- the Company may be subject to opposition proceedings in the U.S. or foreign countries;
- any patents that are issued to the Company may not provide meaningful protection;
- the Company may not be able to develop additional proprietary technologies that are patentable;
- other companies may challenge patents issued to the Company;
- other companies may have independently developed and/or patented (or may in the future independently develop and patent) similar or alternative technologies, or duplicate the Company's technologies;
- other companies may design around technologies the Company has developed; and
- enforcement of the Company's patents would be complex, uncertain and very expensive.

The Company cannot be certain that patents will be issued as a result of any future applications, or that any of the Company's patents, once issued, will provide the Company with adequate protection from competing products. For example, issued patents may be circumvented or challenged, declared invalid or unenforceable, or narrowed in scope. In addition, since publication of discoveries in scientific or patent literature often lags behind actual discoveries, the Company cannot be certain that it will be the first to make its additional new inventions or to file patent applications covering those inventions. It is also possible that others may have or may obtain issued patents that could prevent the Company from commercializing the Company's products or require the Company to obtain licenses requiring the payment of significant fees

or royalties in order to enable the Company to conduct its business. As to those patents that the Company may license or otherwise monetize, the Company's rights will depend on maintaining its obligations to the licensor under the applicable license agreement, and the Company may be unable to do so. The Company's failure to obtain or maintain intellectual property rights for the Company's inventions would lead to the loss the Company's investments in such activities, which would have a material and adverse effect on the Company's company.

Moreover, patent application delays could cause delays in recognizing revenue from the Company's internally generated patents and could cause the Company to miss opportunities to license patents before other competing technologies are developed or introduced into the market.

***New legislation, regulations or court rulings related to enforcing patents could harm the Company's new line of business and operating results.***

If Congress, the United States Patent and Trademark Office or courts implement new legislation, regulations or rulings that impact the patent enforcement process or the rights of patent holders, these changes could negatively affect the Company's new business model. For example, limitations on the ability to bring patent enforcement claims, limitations on potential liability for patent infringement, lower evidentiary standards for invalidating patents, increases in the cost to resolve patent disputes and other similar developments could negatively affect the Company's ability to assert its patent or other intellectual property rights.

In addition, on September 16, 2011, the Leahy-Smith America Invents Act (the "Leahy-Smith Act"), was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These changes include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The U.S. Patent Office is currently developing regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act recently became effective. Accordingly, it is too early to tell what, if any, impact the Leahy-Smith Act will have on the operation of the Company's business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of the Company's issued patents, all of which could have a material adverse effect on the Company's business and financial condition.

On February 27, 2013, US Representatives DeFazio and Chaffetz introduced HR845. In general, the bill known as the SHIELD Act ("Saving High-tech Innovators from Egregious Legal Disputes), seeks to assess legal fee liability to plaintiffs in patent infringement actions for defendants costs. In the event that the bill becomes law, the potential obligation to pay the legal fees of defendants in patent disputes could have a material adverse effect on the Company's business or financial condition.

It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become enacted as laws. Compliance with any new or existing laws or regulations could be difficult and expensive, affect the manner in which the Company conducts its business and negatively impact the Company's business, prospects, financial condition and results of operations.

***The Company's acquisitions of patent assets may be time consuming, complex and costly, which could adversely affect the Company's operating results.***

Acquisitions of patent or other intellectual property assets, which are and will be critical to the Company's business plan, are often time consuming, complex and costly to consummate. The Company may utilize many different transaction structures in its acquisitions and the terms of such acquisition agreements tend to be heavily negotiated. As a result, the Company expects to incur significant operating expenses and will likely be required to raise capital during the negotiations even if the acquisition is ultimately not consummated. Even if the Company is able to acquire particular patent assets, there is no guarantee that the Company will generate sufficient revenue related to those patent assets to offset the acquisition costs. While the Company will seek to conduct confirmatory due diligence on the patent assets the Company is considering for acquisition, the Company may acquire patent assets from a seller who does not have proper title to those assets. In those cases, the Company may be required to spend significant resources to defend the Company's interest in the patent assets and, if the Company is not successful, its acquisition may be invalid, in which case the Company could lose part or all of its investment in the assets.

The Company may also identify patent or other intellectual property assets that cost more than the Company is prepared to spend with its own capital resources. The Company may incur significant costs to organize and negotiate a structured acquisition that does not ultimately result in an acquisition of any patent assets or, if consummated, proves to be unprofitable for the Company. These higher costs could adversely affect the Company's operating results, and if the Company incurs losses, the value of its securities will decline.

In addition, the Company may acquire patents and technologies that are in the early stages of adoption in the commercial, industrial and consumer markets. Demand for some of these technologies will likely be untested and may be subject to fluctuation based upon the rate at

which the Company's licensees will adopt its patents and technologies in their products and services. As a result, there can be no assurance as to whether technologies the Company acquires or develops will have value that it can monetize.

***In certain acquisitions of patent assets, the Company may seek to defer payment or finance a portion of the acquisition price. This approach may put the Company at a competitive disadvantage and could result in harm to the Company's business.***

The Company has limited capital and may seek to negotiate acquisitions of patent or other intellectual property assets where the Company can defer payments or finance a portion of the acquisition price. These types of debt financing or deferred payment arrangements may not be as attractive to sellers of patent assets as receiving the full purchase price for those assets in cash at the closing of the acquisition. As a result, the Company might not compete effectively against other companies in the market for acquiring patent assets, many of whom have greater cash resources than the Company has. In addition, any failure to satisfy the Company's debt repayment obligations may result in adverse consequences to its operating results.

***Any failure to maintain or protect the Company's patent assets or other intellectual property rights could significantly impair its return on investment from such assets and harm the Company's brand, its business and its operating results.***

The Company's ability to operate its new line of business and compete in the intellectual property market largely depends on the superiority, uniqueness and value of the Company's acquired patent assets and other intellectual property. To protect its proprietary rights, the Company will rely on a combination of patent, trademark, copyright and trade secret laws, confidentiality agreements with its employees and third parties, and protective contractual provisions. No assurances can be given that any of the measures the Company undertakes to protect and maintain its assets will have any measure of success.

Following the acquisition of patent assets, the Company will likely be required to spend significant time and resources to maintain the effectiveness of those assets by paying maintenance fees and making filings with the United States Patent and Trademark Office. The Company may acquire patent assets, including patent applications, which require the Company to spend resources to prosecute the applications with the United States Patent and Trademark Office. Further, there is a material risk that patent related claims (such as, for example, infringement claims (and/or claims for indemnification resulting therefrom), unenforceability claims, or invalidity claims) will be asserted or prosecuted against the Company, and such assertions or prosecutions could materially and adversely affect the Company's business. Regardless of whether any such claims are valid or can be successfully asserted, defending such claims could cause the Company to incur significant costs and could divert resources away from the Company's other activities.

Despite the Company's efforts to protect its intellectual property rights, any of the following or similar occurrences may reduce the value of the Company's intellectual property:

- the Company's applications for patents, trademarks and copyrights may not be granted and, if granted, may be challenged or invalidated;
- issued trademarks, copyrights, or patents may not provide the Company with any competitive advantages when compared to potentially infringing other properties;
- the Company's efforts to protect its intellectual property rights may not be effective in preventing misappropriation of the Company's technology; or
- the Company's efforts may not prevent the development and design by others of products or technologies similar to or competitive with, or superior to those the Company acquires and/or prosecutes.

Moreover, the Company may not be able to effectively protect its intellectual property rights in certain foreign countries where the Company may do business in the future or from which competitors may operate. If the Company fails to maintain, defend or prosecute its patent assets properly, the value of those assets would be reduced or eliminated, and the Company's business would be harmed.

***Weak global economic conditions may cause infringing parties to delay entering into licensing agreements, which could prolong the Company's litigation and adversely affect its financial condition and operating results.***

The Company's new business plan depends significantly on worldwide economic conditions, and the United States and world economies have recently experienced weak economic conditions. Uncertainty about global economic conditions poses a risk as businesses may postpone spending in response to tighter credit, negative financial news and declines in income or asset values. This response could have a material negative effect on the willingness of parties infringing on the Company's assets to enter into licensing or other revenue generating agreements voluntarily. Entering into such agreements is critical to the Company's business plan, and the Company's failure to do so could cause material harm to its business.

*If the Company is unable to adequately protect its intellectual property, the Company may not be able to compete effectively.*

The Company's ability to compete depends in part upon the strength of the Company's proprietary rights that it will own as a result of the Merger or may hereafter acquire in its technologies, brands and content. The Company intends to rely on a combination of U.S. and foreign patents, copyrights, trademark, trade secret laws and license agreements to establish and protect its intellectual property and proprietary rights. The efforts the Company takes to protect its intellectual property and proprietary rights may not be sufficient or effective at stopping unauthorized use of its intellectual property and proprietary rights. In addition, effective trademark, patent, copyright and trade secret protection may not be available or cost-effective in every country in which the Company's services are made available. There may be instances where the Company is not able to fully protect or utilize its intellectual property in a manner that maximizes competitive advantage. If the Company is unable to protect its intellectual property and proprietary rights from unauthorized use, the value of the Company's products may be reduced, which could negatively impact the Company's new business. The Company's inability to obtain appropriate protections for its intellectual property may also allow competitors to enter the Company's markets and produce or sell the same or similar products. In addition, protecting the Company's intellectual property and other proprietary rights is expensive and diverts critical managerial resources. If any of the foregoing were to occur, or if the Company is otherwise unable to protect its intellectual property and proprietary rights, the Company's business and financial results could be adversely affected.

If the Company is forced to resort to legal proceedings to enforce its intellectual property rights, the proceedings could be burdensome and expensive. In addition, the Company's proprietary rights could be at risk if the Company is unsuccessful in, or cannot afford to pursue, those proceedings. The Company will also rely on trade secrets and contract law to protect some of its proprietary technology. The Company will enter into confidentiality and invention agreements with its employees and consultants. Nevertheless, these agreements may not be honored and they may not effectively protect the Company's right to its un-patented trade secrets and know-how. Moreover, others may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to the Company's trade secrets and know-how.

*If the NASDAQ Stock Market determines that the Merger with North South and the issuance of the Merger Consideration results in a change of control of the Company, the Company may be required to submit a new application under NASDAQ's original listing standards and if such application is not approved, the Company's Common Stock may be delisted from The NASDAQ Capital Market.*

In connection with the Merger, the Company will issue 118,483 shares of Common Stock and 1,488,152 shares of Series D Preferred Stock, which are convertible into shares of Common Stock on a one-for-ten basis. The Company does not believe the issuance of the Merger Consideration will result in a change of control of the Company because of, among other things, the significant overlap in ownership between the Company and North South. NASDAQ Rule 5110(a) provides that a Company must apply for initial listing in connection with a transaction whereby a company combines with a non-NASDAQ entity, resulting in a change of control of such company and potentially allowing the non-NASDAQ entity to effectively obtain NASDAQ listing. In determining whether a change of control has occurred, NASDAQ considers all relevant factors including, changes in management, board of directors, voting power, ownership and financial structure of the Company. If The NASDAQ Stock Market determines that a change of control does in fact result from the consummation of the Merger and the issuance of the Merger Consideration and an original listing application has not been approved prior to the consummation of Merger, the Company will be in violation of NASDAQ Rule 5110(a) and the Company's Common Stock could be delisted from The NASDAQ Capital Market.

#### **Item 8.01 Other Events.**

On April 1, 2013, the board of directors of the Company approved the adoption of a 2013 Equity Incentive Plan (the "2013 Plan"). The purpose of the 2013 Plan is to promote the success of the Company and to increase stockholder value by providing an additional means through the grant of awards to attract, motivate, retain and reward selected employees and other eligible persons. The 2013 Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock, restricted stock units, stock appreciation rights and other types of stock-based awards to the Company's employees, officers, directors and consultants. Pursuant to the terms of the 2013 Plan, either the board or a board committee is authorized to administer the plan, including by determining which eligible participants will receive awards, the number of shares of common stock subject to the awards and the terms and conditions of such awards. Up to 2,800,000 shares of common stock are issuable pursuant to awards under the 2013 Plan. Unless earlier terminated by the Board, the 2013 Plan shall terminate at the close of business on April 1, 2023.

The foregoing is a summary description of the terms and conditions of the 2013 Plan does not purport to be complete and is qualified in its entirety by reference to the 2013 Plan, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated by reference herein.

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

(d) Exhibits.

The exhibits listed in the following Exhibit Index are filed as part of this Current Report on Form 8-K.

<b>Exhibit No.</b>	<b>Description</b>
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3.1	Series D Convertible Preferred Stock Certificate of Designation
10.1	Agreement and Plan of Merger dated April 2, 2013
10.2	Spherix Incorporated 2013 Equity Incentive Plan

**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.

Spherix Incorporated  
(Registrant)

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**By:**

/s/ Robert L. Clayton  
Robert L. Clayton  
Chief Financial Officer

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**Date:** April 4, 2013

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES D CONVERTIBLE PREFERRED STOCK**

The undersigned, Chief Financial Officer of Spherix Incorporated, a Delaware corporation (the "Corporation"), DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors of the Corporation by unanimous written consent on April 2, 2013;

WHEREAS, the Board of Directors is authorized within the limitations and restrictions stated in the Certificate of Incorporation of the Corporation, as amended, to provide by resolution or resolutions for the issuance of five million (5,000,000) shares of Preferred Stock, par value \$0.0001 per share, of the Corporation, in such series and with such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions as the Corporation's Board of Directors shall fix by resolution or resolutions providing for the issuance thereof duly adopted by the Board of Directors; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to authorize and fix the terms of a series of Preferred Stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED:

**Section 1.**     Designation and Authorized Shares. The Corporation shall be authorized to issue one million four hundred eighty-eight thousand one hundred and fifty-two (1,488,152) shares of Series D Preferred Stock, par value \$0.0001 per share (the "Series D Preferred Stock").

**Section 2.**     Stated Value. Each share of Series D Preferred Stock shall have a stated value of \$0.0001 per share (the "Stated Value").

**Section 3.**     Liquidation.

(a) Upon the liquidation, dissolution or winding up of the business of the Corporation, whether voluntary or involuntary, each holder of Series D Preferred Stock shall be entitled to receive, for each share thereof, out of assets of the Corporation legally available therefor, a preferential amount in cash equal to the greater of (i) the Stated Value or (ii) the amount the holder would receive as a holder of the Corporation's common stock, par value \$0.0001 per share (the "Common Stock"), if such holder had converted the Series D Preferred Stock immediately prior to such liquidation, dissolution or winding up (without regard to any limitations on conversion or beneficial ownership herein or elsewhere). All preferential amounts to be paid to the holders of Series D Preferred Stock in connection with such liquidation, dissolution or winding up shall be paid before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to the holders of (i) any other class or series of capital stock whose terms expressly provide that the holders of Series D Preferred Stock should receive preferential payment with respect to such distribution (to the extent of such preference) and (ii) the Corporation's Common Stock. If upon any such distribution the assets of the Corporation shall be insufficient to pay the holders of the outstanding shares of Series D Preferred Stock (or the holders of any class or series of capital stock ranking on a parity with the Series D Preferred Stock as to distributions in the event of a liquidation, dissolution or winding up of the Corporation) the full amounts to which they shall be entitled, such holders shall share ratably in any distribution of assets in accordance with the sums which would be payable on such distribution if all sums payable thereon were paid in full.

(b) Any distribution in connection with the liquidation, dissolution or winding up of the Corporation, or any bankruptcy or insolvency proceeding, shall be made in cash to the extent possible. Whenever any such distribution shall be paid in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

**Section 4.**     Voting. Except as otherwise expressly required by law, each holder of Series D Preferred Stock shall be entitled to vote on all matters submitted to shareholders of the Corporation and shall be entitled to the number of votes for each share of Series D Preferred Stock owned at the record date for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, equal to the number of shares of Common Stock such shares of Series D Preferred Stock are convertible into at such time, taking into account the Beneficial Ownership Limitations and Conversion Limits set forth in Section 5 herein. Except as otherwise required by law, the holders of shares of Series D Preferred Stock shall vote together with the holders of Common Stock on all matters and shall not vote as a separate class.

## Section 5. Conversion.

(a) *Conversion Right.* Each holder of Series D Preferred Stock may, from time to time, convert any or all of such holder's shares of Series D Preferred Stock into fully paid and non-assessable shares of Common Stock in an amount equal to ten (10) shares of the Corporation's Common Stock for each one (1) share of Series D Preferred Stock surrendered, subject to the limitations set forth in this Section 5.

(b) *Conversion Procedure.* In order to exercise the conversion privilege under this Section 5, the holder of any shares of Series D Preferred Stock to be converted shall give written notice to the Corporation at its principal office that such holder elects to convert such shares of Series D Preferred Stock or a specified portion thereof into shares of Common Stock as set forth in such notice (the "Conversion Notice", and such date of delivery of the Conversion Notice to the Corporation, the "Conversion Notice Delivery Date"). Within three (3) Trading Days following the Conversion Notice Delivery Date, the Corporation shall issue and deliver a certificate or certificates representing the number of shares of Common Stock determined pursuant to this Section 5 (the "Share Delivery Date"). In case of conversion under this Section 5 of only a part of the shares of Series D Preferred Stock represented by a certificate surrendered to the Corporation, the Corporation shall issue and deliver a new certificate for the number of shares of Series D Preferred Stock which have not been converted, upon receipt of the original certificate or certificates representing shares of Series D Preferred Stock so converted. Until such time as the certificate or certificates representing shares of Series D Preferred Stock which have been converted are surrendered to the Corporation and a certificate or certificates representing the Common Stock into which such shares of Series D Preferred Stock have been converted have been issued and delivered, the certificate or certificates representing the shares of Series D Preferred Stock which have been converted shall represent the shares of Common Stock into which such shares of Series D Preferred Stock have been converted. The Corporation shall pay all documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock issuable upon conversion of the Series D Preferred Stock. For purposes of this Certificate of Designation, (i) a "Trading Day" means (A) a day on which the Common Stock is traded on a Trading Market (as defined below), or (B) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded on the over the counter market, as reported by the OTC Bulletin Board (the "Bulletin Board"), or (C) if the Common Stock is not quoted on the Bulletin Board, a day on which prices for the Common Stock are reported on the OTCQB published by OTC Market Group, LLC (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed, quoted or reported as set forth in (A), (B) and (C) hereof, then Trading Day shall mean a business day and (ii) "Trading Market" means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, the New York Stock Exchange or the NYSE MKT, LLC.

(c) *Maximum Conversion.*

- (i) Notwithstanding anything to the contrary set forth in this Certificate of Designation, at no time may all or a portion of shares of Series D Preferred Stock be converted if the number of shares of Common Stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Common Stock owned by such holder at such time, the number of shares of Common Stock which would result in such holder beneficially owning (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules thereunder) more than 4.99% of all of the Common Stock outstanding at such time (the "4.99% Beneficial Ownership Limitation"); provided, however, that upon the holder providing the Corporation with sixty-one (61) days' advance notice (the "4.99% Waiver Notice") that such holder would like to waive this Section 5(c) (i) with regard to any or all shares of Common Stock issuable upon conversion of the Series D Preferred Stock, this Section 5 (c) (i) will be of no force or effect with regard to all or a portion of the shares of Series D Preferred Stock held by such holder referenced in the 4.99% Waiver Notice.
- (ii) Notwithstanding anything to the contrary set forth in this Certificate of Designation, at no time may all or a portion of Series D Preferred Stock be converted if the number of shares of Common Stock to be issued pursuant to such conversion, when aggregated with all other shares of Common Stock owned by such holder at such time, would result in such holder beneficially owning (as determined in accordance with Section 13(d) of the Exchange Act and the rules thereunder) in excess of 9.99% of the then issued and outstanding shares of Common Stock outstanding at such time (the "9.99% Beneficial Ownership Limitation" and collectively with the 4.99% Beneficial Ownership Limitation, the "Beneficial Ownership Limitations" and the lower of the 9.99% Beneficial Ownership Limitation and the 4.99% Beneficial Ownership Limitation then in effect, the "Maximum Percentage").
- (iii) By written notice to the Corporation, a holder of Series D Preferred Stock may from time to time decrease the Maximum Percentage to any other percentage specified in such notice.
- (iv) For purposes of this Section 5, in determining the number of outstanding shares of Common Stock, a holder of Series D Preferred Stock may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Corporation or (3) any other notice by the Corporation setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of a holder of

Series D Preferred Stock, the Corporation shall within one (1) business day confirm orally and in writing to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including shares of Series D Preferred Stock, held by such holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported, which in any event are convertible or exercisable, as the case may be, into shares of the Corporation's Common Stock within 60 days' of such calculation and which are not subject to a limitation on conversion or exercise analogous to the limitation contained herein. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5 to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(d) *Buy-In.* If, by the Share Delivery Date, the Corporation fails for any reason to deliver the shares of Common Stock issuable upon conversion of the Series D Preferred Stock, as set forth in the Conversion Notice, and after such Share Delivery Date, the converting holder purchases, in an arm's length open market transaction or otherwise, shares of Common Stock (the "Covering Shares") in order to make delivery in satisfaction of a sale of Common Stock by the converting holder (the "Sold Shares"), which delivery such converting holder anticipated to make using the shares to be issued upon such conversion (a "Buy-In"), the converting holder shall have the right to require the Corporation to pay to the converting holder the Buy-In Adjustment Amount. The Corporation shall pay the Buy-In Adjustment Amount to the converting holder in immediately available funds immediately upon demand by the converting holder. For purposes of this Certificate of Designation, the term "Buy-In Adjustment Amount" means the amount equal to the excess, if any, of (i) the converting holder's total purchase price (including brokerage commissions, if any) for the Covering Shares associated with a Buy-In, over (ii) the net proceeds (after brokerage commissions, if any) received by the converting holder from the sale of the Sold Shares. By way of illustration and not in limitation of the foregoing, if the converting holder purchases shares of Common Stock having a total purchase price (including brokerage commissions) of \$11,000 to cover a Buy-In, with respect to shares of Common Stock it sold for net proceeds of \$10,000, the Buy-In Adjustment Amount which the Corporation will be required to pay to the converting holder will be \$1,000.

(e) *Additional Conversion Limitations.* Subject to the Beneficial Ownership Limitations of Section 5(c) herein, which shall be in addition to the maximum conversion limitations set forth in Section 5(c)(1) and (2) herein, the holder of the Series D Preferred Stock may not convert such Series D Preferred Stock in excess of the Conversion Limit. For purposes of this Section 5(e), "Conversion Limit" shall be defined as that number of shares of Common Stock as shall equal 15% (the "Volume Percentage") of the greater of: (i) the trading volume of the Corporation's Common Stock on the Conversion Notice Delivery Date or (ii) the average trading volume of the Corporation's Common Stock for the ten (10) Trading Days immediately prior to the Conversion Notice Delivery Date. Notwithstanding the foregoing, if the Corporation's Common Stock trades at a price of at least Twelve Dollars (\$12.00) per share on the Conversion Notice Delivery Date, then the Volume Percentage for purposes of this Section 5(e) shall equal 20%. Notwithstanding the foregoing, the holder of Series D Preferred Stock may convert such shares of Series D Preferred Stock so held without regard to the Conversion Limit if the Corporation's Common Stock trades at a minimum price of Fifteen Dollars (\$15.00) per share on the Conversion Notice Delivery Date. For the absence of doubt the foregoing shall be subject to the Beneficial Ownership Limitations of Section 5(c) herein. The Conversion Limit will be applicable to all holders of Series D Preferred Stock and, if waived, terminated or modified by the Corporation for any holder, such Conversion Limit will be deemed waived, terminated or modified (as the case may be), and such waiver, termination or modification shall be equally applicable to all holders of the Series D Preferred Stock, provided however, that if any condition must be satisfied or consideration provided for such waiver, modification or termination, each holder of Series D Preferred Stock shall be required to satisfy such condition or provide such consideration (accounting for each holder's pro rata share) in order to be entitled to the benefits of such waiver, termination or modification.

(f) *Legends.* Each certificate evidencing Series D Preferred Stock shall contain a legend reflecting the terms of any restrictions on conversions as provided in this Section 5(c).

## Section 6. Other Provisions.

(a) *Reservation of Common Stock.* The Corporation shall at all times reserve from its authorized Common Stock a sufficient number of shares to provide for conversion of all Series D Preferred Stock from time to time outstanding.

(b) *Record Holders.* The Corporation and its transfer agent, if any, for the Series D Preferred Stock may deem and treat the record holder of any shares of Series D Preferred Stock as reflected on the books and records of the Corporation as the sole true and lawful owner thereof for all purposes, and neither the Corporation nor any such transfer agent shall be affected by any notice to the contrary. Upon request, the Corporation will provide the total number of issued and outranking shares of Series D Preferred Stock to any holder thereof.

**Section 7. Restriction and Limitations.** Except as expressly provided herein or as required by law so long as any shares of Series D Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the holders of at least a majority of the then outstanding shares of the Series D Preferred Stock, take any action which would adversely and materially affect any of the preferences, limitations or relative rights of the Series D Preferred Stock.

## Section 8. Certain Adjustments.

(a) *Stock Dividends and Stock Splits.* If the Corporation, at any time while the Series D Preferred Stock is outstanding: (A) shall pay a stock dividend or otherwise make a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation pursuant to the Series D Preferred Stock), (B) subdivide outstanding shares of Common Stock into a larger number of shares, (C) combine (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (D) issue by reclassification of shares of the Common Stock any shares of capital stock of the Corporation, each share of Series D Preferred Stock shall receive such consideration as if such number of shares of Series D Preferred had been, immediately prior to such foregoing dividend, distribution, subdivision, combination or reclassification, the holder of the number of shares of Common Stock into which it could convert at such time; provided, however, to the extent that a holder's right to participate in any such dividend, distribution, subdivision, combination or reclassification would result in the holder exceeding the Maximum Percentage, if applicable, then the holder shall not be entitled to participate in such dividend, distribution, subdivision, combination or reclassification to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such dividend, distribution, subdivision, combination or reclassification to such extent) and the portion of such dividend, distribution, subdivision, combination or reclassification shall be held in abeyance for the benefit of the holder until such time, if ever, as its right thereto would not result in the holder exceeding the Maximum Percentage, at which time such holder shall be delivered such dividend, distribution, subdivision, combination or reclassification to the extent as if there had been no such limitation). Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) *Fundamental Transaction.* If, at any time while the Series D Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another association, corporation, individual, partnership, limited liability company, trust or any other entity or organization (each, a "Person"), (B) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, (D) the Corporation consummates a transaction pursuant to which another Person becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by all of the Common Stock outstanding at such time, or (E) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (in any such case, a "Fundamental Transaction"), then, upon any subsequent conversion of this Series D Preferred Stock, each holder of Series D Preferred Stock shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of such shares of Common Stock (without regard to any limitations on conversion herein or elsewhere); provided, however, to the extent that a holder's right to receive securities of the Successor Entity would result in the holder exceeding the Maximum Percentage, if applicable, then the holder shall not be entitled to receive such shares to such extent (or to beneficially own any shares of common stock (or their equivalent) of the Successor Entity as a result of such consideration to such extent) and the portion of such shares shall be held in abeyance for the benefit of the holder until such time, if ever, as its right thereto would not result in the holder exceeding the Maximum Percentage, at which time such holder shall be delivered such shares to the extent as if there had been no such limitation). The provisions of this Section 8(b) shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Series D Preferred Stock.

For purposes of this Certificate of Designation, "Successor Entity" means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, the New York Stock Exchange, the NYSE MKT, LLC, the OTCBB or the OTCQB (each, an "Eligible Market"), Successor Entity shall mean such entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on the Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

**Section 9. Equal Treatment of Holders.** No consideration (including any modification of this Certificate of Designation or related transaction document) shall be offered or paid to any person or entity to amend or consent to a waiver or modification of any provision of this Certificate of Designation or related transaction document unless the same consideration is also offered to all of holders of the outstanding shares of Series D Preferred Stock. For clarification purposes, this provision constitutes a separate right granted to each holder by the Corporation and negotiated separately by each holder, and is intended for the Corporation to treat all holders of the Series D Preferred Stock as a class and shall not in any way be construed as such holders acting in concert or as a group with respect to the purchase, disposition or voting of the Series D Preferred Stock or otherwise.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this \_\_\_day of April 2013.

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

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**AGREEMENT AND PLAN OF MERGER**

by and among

**SPHERIX INCORPORATED,**

**NUTA TECHNOLOGY CORP.**

**NORTH SOUTH HOLDINGS INC.**

**AND**

**THE STOCKHOLDERS OF NORTH SOUTH HOLDINGS INC.**

Dated as of April 2, 2013

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## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger is entered into as of April 2, 2013, by and among SPHERIX INCORPORATED, a Delaware corporation (“**Parent**”); NUTA TECHNOLOGY CORP., a Virginia corporation and wholly-owned subsidiary of Parent (“**Buyer**”); NORTH SOUTH HOLDINGS INC., a Delaware corporation (the “**Company**”); and the undersigned shareholders of the Company as holders of all of the capital stock of the Company (collectively, the “**Stockholders**”). Parent, Buyer, Company and the Stockholders are each a “**party**” and together are “**parties**” to this Agreement.

### R E C I T A L S

WHEREAS, the Company is the owner of a patent portfolio as well as certain licenses and rights, including the right to commercialize inventions described in the patent portfolio;

WHEREAS, the Stockholders own 100% of the issued and outstanding capital stock of the Company; and

WHEREAS, the Boards of Directors of Parent, Buyer and the Company have each approved the acquisition of the Company by merger of the Company with and into the Buyer, with Buyer surviving such merger, upon the terms and subject to the conditions set forth in this Agreement, whereby all of the issued and outstanding shares of the capital stock of the Company will be converted into the right to receive the Merger Consideration (as defined herein); and

### A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound the parties agree as follows:

#### ARTICLE I DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided,

- (a) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular,
- (b) all accounting terms not otherwise defined herein have the meanings assigned under GAAP,
- (c) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement,
- (d) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms, and
- (e) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

As used in this Agreement and the schedules delivered pursuant to this Agreement, the following definitions shall apply:

“**AAA Rules**” has the meaning set forth in Section 9.15.

“**Action**” means any action, complaint, claim, charge, petition, investigation, suit or other proceeding, whether civil or criminal, in law or in equity, or before any mediator, arbitrator or Governmental Entity.

**“Affiliate”** means with respect to any specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person.

**“Agreement”** means this Agreement and Plan of Merger, as amended or supplemented, together with all exhibits and schedules attached or incorporated by reference.

**“Approval”** means any approval, authorization, consent, qualification or registration, or any waiver of any of the foregoing, required to be obtained from, or any notice, statement or other communication required to be filed with or delivered to, any Governmental Entity or any other Person.

**“Articles of Merger”** has the meaning set forth in Section 2.2.

**“Business Day”** means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York, New York.

**“Buyer”** has the meaning set forth in the preamble to this Agreement.

**“Certificate of Merger”** has the meaning set forth in Section 2.2.

**“Certificates”** has the meaning set forth in Section 2.6.

**“Claim”** has the meaning set forth in Section 8.3.

**“Claim Notice”** has the meaning set forth in Section 8.3.

**“Closing”** has the meaning set forth in Section 2.11.

**“Closing Date”** means the date of the Closing as set forth in Section 2.11.

**“Common Consideration”** has the meaning set forth in Section 2.5.

**“Common Share”** and **“Common Shares”** have the meanings set forth in Section 2.5.

**“Common Stock”** means the common stock, par value \$0.0001 per share, of the Company.

**“Company”** has the meaning set forth in the preamble to this Agreement.

**“Company Intellectual Property”** has the meaning set forth in Section 3.10(a).

**“Conditions Precedent”** has the meaning set forth in Section 6.5.

**“Conversion Limit”** has the meaning set forth in Section 6.9.

**“Contract”** means any agreement, contract, arrangement, bond, loan commitment, franchise, indemnity, indenture, instrument, lease, license or understanding, whether or not in writing.

**“COV”** has the meaning set forth in Section 2.1.

**“DGCL”** has the meaning set forth in Section 2.1.

**“Effective Time”** has the meaning set forth in Section 2.2.

**“Encumbrance”** means any claim, charge, easement, encumbrance, lease, covenant, security interest, lien, option, pledge, rights of others, or restriction (whether on voting, sale, transfer, disposition or otherwise), whether imposed by agreement, understanding, law, equity or otherwise, except for any restrictions on transfer generally arising under any applicable federal or state securities law.

**“Escrow Agent”** means a mutually agreed to third party that is in the business of providing the escrow services similar to the services required herein.

**“Escrow Agreement”** has the meaning set forth in Section 2.7.

“**Escrow Period**” has the meaning set forth in Section 2.7.

“**Escrow Shares**” has the meaning set forth in Section 2.7.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Existing Licenses**” has the meaning set forth in Section 3.10(e).

“**GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time.

“**Governmental Entity**” means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“**Indemnified Party**” has the meaning set forth in Section 8.3.

“**Indemnifying Party**” has the meaning set forth in Section 8.3.

“**Intellectual Property**” means all of the following in any jurisdiction throughout the world: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all U.S. and foreign patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, brand names, certification marks, trade dress, logos, trade names, domain names, assumed names and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including source code, object code, diagrams, data and related documentation), (g) all other proprietary rights, (h) all copies and tangible embodiments of the foregoing (in whatever form or medium), (i) licenses, immunities, covenants not to sue and the like relating to the foregoing, and (j) any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

“**Knowledge**” or “**Known**” shall mean the actual knowledge (without investigation) of the Stockholders, the Company, the Parent or the Buyer, as the case may be.

“**Law**” means any constitutional provision, statute or other law, rule, regulation, or interpretation of any Governmental Entity and any Order.

“**Loss**” means any action, cost, damage, disbursement, expense, liability, loss, deficiency, diminution in value, obligation, penalty or settlement of any kind or nature, whether foreseeable or unforeseeable, including but not limited to, interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the specified Person.

“**Material Adverse Effect**” means, with respect to any Person, (i) a material adverse effect on the condition (financial or otherwise), business, prospects, assets, liabilities, or results of operations of such Person; or (ii) a material adverse effect on the ability of such Person to consummate the transactions contemplated by this Agreement.

“**Merger**” has the meaning set forth in Section 2.1.

**“Merger Consideration”** has the meaning set forth in Section 2.5.

**“Non-Escrow Shares”** has the meaning set forth in Section 2.7.

**“Order”** means any decree, injunction, judgment, order, ruling, assessment or writ of any Governmental Entity.

**“Parent”** has the meaning set forth in the preamble to this Agreement.

**“Parent Indemnified Party”** has the meaning set forth in Section 8.1.

**“Parent Indemnifying Party”** has the meaning set forth in Section 8.2.

**“Parent Shares”** shall mean shares of common stock, par value \$0.0001 per share and all shares of Parent’s Series D Convertible Stock, par value \$0.0001 per share, delivered to the Stockholders as part of the Merger Consideration.

**“Person”** means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

**“Pre-Closing Tax Returns”** has the meaning set forth in Section 7.2.

**“Preferred Consideration”** has the meaning set forth in Section 2.5.

**“Preferred Escrow Shares”** has the meaning set forth in Section 2.7.

**“Preferred Share”** and **“Preferred Shares”** have the meanings set forth in Section 2.5.

**“Preferred Stock”** means the preferred stock, par value \$0.0001 per share, of the Company.

**“Regulation D”** has the meaning set forth in Section 3.6.

**“SEC”** means the United States Securities and Exchange Commission.

**“Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Series A Preferred Stock”** means the preferred stock, par value \$0.0001 per share, of the Company, the terms of which are set forth in a certificate of designation filed by the Company with the Secretary of State of the State of Delaware and annexed hereto as Exhibit A.

**“Series B Preferred Stock”** means the preferred stock, par value \$0.0001 per share, of the Company, the terms of which shall be set forth in a certificate of designation filed by the Company with the Secretary of State of the State of Delaware prior to the Closing, substantially in the form of Exhibit B annexed hereto.

**“Series D Certificate of Designation”** has the meaning set forth in Section 2.5.

**“Series D Preferred Stock”** has the meaning set forth in Section 2.5.

**“Share”** and **“Shares”** has the meaning set forth in Section 2.5 and includes all options, warrants or other securities convertible into shares.

**“Stockholders”** has the meaning set forth in the preamble to this Agreement.

**“Stockholders Indemnified Party”** has the meaning set forth in Section 8.2.

**“Stockholders Indemnifying Party”** and **“Stockholders Indemnifying Parties”** has the meaning set forth in Section 8.1(a).

**“Straddle Period”** has the meaning set forth in Section 7.3.

**“Surviving Entity”** has the meaning set forth in Section 2.1.

“**Tax**” (and, with correlative meaning, “**Taxes**”) means: (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, escheat, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value added, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of the Company for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of the Company under any Tax Sharing Arrangement or Tax Indemnity Agreement.

“**Tax Claim**” has the meaning set forth in Section 7.6.

“**Tax Indemnity Agreement**” means any written or unwritten agreement or arrangement pursuant to which the Company may be required to indemnify or reimburse another party for any liability relating to Taxes.

“**Tax Period**” has the meaning set forth in Section 3.7

“**Tax Return**” means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

“**Tax Sharing Arrangement**” means any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return which includes the Company.

“**Threshold**” has the meaning set forth in Section 8.1(c).

“**Volume Percentage**” has the meaning set forth in Section 6.9

## **ARTICLE II THE MERGER**

**2.1 The Merger.** At the Effective Time and upon the terms and subject to the conditions of this Agreement, including the satisfaction of the Conditions Precedent set forth in Section 6.5 herein, and in accordance with the Delaware General Corporation Law (the “**DGCL**”) and the Code of Virginia (the “**COV**”), the Company shall be merged with and into Buyer (the “**Merger**”). Following the Merger, (i) the Buyer shall continue as the surviving entity (the “**Surviving Entity**”) and wholly owned subsidiary of Parent incorporated and domiciled in the State of Virginia and (ii) the separate corporate existence of the Company shall cease. Parent, as the sole owner of Buyer, hereby approves the Merger and this Agreement.

**2.2 Effective Time.** Subject to the terms and conditions set forth in this Agreement, on the Closing Date, (i) a Certificate of Merger, substantially in the form of Exhibit C annexed hereto (the “**Certificate of Merger**”) shall be duly executed and acknowledged by the Company and thereafter delivered to the Secretary of State of Delaware for filing and (ii) Articles of Merger, substantially in the form of Exhibit D annexed hereto (the “**Articles of Merger**”) shall be duly executed and acknowledged by Buyer and the Company and thereafter delivered to the Clerk of the State Corporation Commission of Virginia for filing. The Merger shall become effective at such time as a properly executed copy of the Certificate of Merger is duly filed with the Secretary of State of Delaware and a properly executed copy of the Articles of Merger is duly filed with the Clerk of the State Corporation Commission of Virginia, or such later time as Parent and the Stockholders may agree upon and as set forth in the Certificate of Merger and the Articles of Merger (the time the Merger becomes effective being referred to herein as the “**Effective Time**”).

**2.3 Effects of the Merger.** The Merger shall have the effects set forth in the DGCL and COV. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of the Company and Buyer shall vest in the Surviving Entity, and all debts,

liabilities and obligations of the Company and Buyer shall become the debts, liabilities and obligations of the Surviving Entity. At the Effective Time, the Surviving Entity shall be incorporated and domiciled in the State of Virginia. The parties agree to cooperate and deliver any further documentation and information as may be required by the Secretary of State of the State of Delaware and/or the Clerk of the State Corporation Commission of Virginia (as the case may be) to cause the Surviving Entity to be domiciled in the State of Virginia at the Effective Time or as soon as thereafter practicable.

**2.4 Certificate and Articles of Incorporation, Bylaws and Directors and Officers.** The certificate of incorporation of the Company shall, without further action, be terminated, and the articles of incorporation and bylaws of the Buyer in effect at the Effective Time shall be the articles of incorporation and bylaws of the Surviving Entity until amended in accordance with applicable Law. The sole officer and director of the Buyer, in office immediately prior to the Effective Time, shall be the sole officer and director of the Surviving Entity effective as of the Effective Time.

**2.5 Conversion of Shares.** At the Effective Time, by virtue of the Merger (and without any action on the part of Buyer or the Company) (i) the shares of Common Stock (each, a “**Common Share**” and, collectively, the “**Common Shares**”) issued and outstanding immediately prior to the Effective Time shall, collectively, be converted into the right to receive the Common Consideration and (ii) the shares of Preferred Stock (each a “**Preferred Share**”, collectively, the “**Preferred Shares**” and, together with the Common Shares, the “**Shares**”) issued and outstanding immediately prior to the Effective Time shall, collectively, be converted into the right to receive the Preferred Consideration. The “**Common Consideration**” is the aggregate consideration consisting of 118,483 shares of Parent’s common stock, par value \$0.0001 per share. The “**Preferred Consideration**” (together with the Common Consideration, the “**Merger Consideration**”) is the aggregate consideration consisting of 1,488,152 shares of Parent’s newly designated Series D Convertible Preferred Stock (the “**Series D Preferred Stock**”), the terms of which are set forth in a certificate of designation to be filed by the Parent with the Secretary of State of the State of Delaware substantially in the form of *Exhibit E* annexed hereto the (“**Series D Certificate of Designation**”). As further set forth in the Series D Certificate of Designation, at no time may shares of Parent’s Series D Preferred Stock be converted if the number of shares of Parent common stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Parent common stock owned by such holder at such time, the number of shares of Parent’s common stock which would result in such holder beneficially owning more than 4.99% or, in accordance with the terms of the Series D Certificate of Designation, 9.99% of all of the Parent’s issued and outstanding common stock at such time.

**2.6 Exchange of Shares for Merger Consideration** At the Effective Time, the Shares issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each certificate previously evidencing any such Shares (the “**Certificates**”) shall thereafter represent the right to receive only the Merger Consideration.

**2.7 Delivery of Merger Consideration; Escrow, Lockup**

At the Effective Time, in accordance with the terms of an escrow agreement (the “**Escrow Agreement**”), substantially in the form of *Exhibit F* annexed hereto, Parent shall deliver (i) to the Escrow Agent, Merger Consideration consisting of ten percent (10%) of the total number of shares of capital stock of the Company constituting the Merger Consideration in shares of Series D Preferred Stock (150,000 shares) (the “**Escrow Shares**”); and (ii) to the Stockholders, the remaining Merger Consideration (the “**Non-Escrow Shares**”). The Escrow Shares shall be available to secure any claims that may arise with respect to the representations, warranties, covenants or indemnification obligations of the Stockholders pursuant to this Agreement during the escrow period (“**Escrow Period**”) of twelve (12) months following the Closing Date. In no event shall the indemnification obligations of the Stockholders under this Agreement exceed the Escrow Shares. The Escrow Shares shall not be available for sale, transfer or other disposition by the Stockholders during the Escrow Period.

**2.8 Buyer Common Stock.** Each share of Buyer common stock, par value \$0.0001 per share, held by Parent immediately prior to the Effective Time shall, by virtue of the Merger and without any action

on the part of the Parent, be converted into the right to receive one (1) share of common stock of the Surviving Entity.

## **2.9 Delivery of Certificates**

(a) Delivery. At the Closing, the Stockholders shall deliver their Certificate(s) to Parent and Parent shall deliver in exchange therefor payment of the Merger Consideration pursuant to Section 2.7. Upon delivery of the Merger Consideration, the Certificate(s) so surrendered by the Stockholders shall forthwith be canceled.

(b) No Further Transfers. The Merger Consideration paid upon the surrender of Shares in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares. From and after the Effective Time, there shall be no further registration of transfers on the transfer books of the Surviving Entity of the Shares that were outstanding immediately prior to the Effective Time.

(c) Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such person of a bond in such reasonable amount as Parent may direct as indemnity against any claim that may be made against it with respect to such Certificate, Parent shall deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect thereto.

## **2.10 Intentionally Omitted**

**2.11 The Closing.** Upon the terms and subject to the conditions of this Agreement, the transactions contemplated by this Agreement shall take place at a closing (the “**Closing**”) to be held at the offices of Baxter, Baker, Sidle, Conn & Jones P.A., contemporaneously with the execution of this Agreement, or at such other place or at such other time or on such other date as the Stockholders and Parent may mutually agree upon in writing, provided that all conditions to closing have been satisfied and closing deliveries required of the parties in this Article II have been delivered (the day on which the Closing takes place being the “**Closing Date**”). The Closing may, with the consent of all parties, take place by delivering an exchange of documents by facsimile transmission or electronic mail with originals to follow by overnight mail service courier.

**2.12 Closing Deliveries by the Stockholders and the Company.** At the Closing, against delivery of, among other things, the Merger Consideration, the Stockholders shall deliver or cause to be delivered to Parent:

(a) the Certificates in accordance with Section 2.9;

(b) All minute books, seals and other records of the Company provided that such minute books, seals and other records shall not be required to be received by Parent prior to the Closing;

(c) Certificates of the Secretary of State and the taxing authorities of the State of Delaware dated not more than five (5) business days prior to the Closing Date, attesting to the incorporation and good standing of the Company as a corporation in its jurisdiction of incorporation, and to the payment of all state taxes due and owing thereby;

(d) Copies, certified by the Secretary of State of Delaware, of the Certificate of Incorporation of the Company, and all amendments thereto;

(e) Copies, certified by the Secretary or Assistant Secretary of the Company as of the Closing Date, of the bylaws of the Company, and all amendments thereto;

(f) a copy, certified as of the Closing Date by the Secretary or Assistant Secretary of Company, of the resolutions of the Board of Directors of the Company authorizing the Company's execution, delivery and performance of this Agreement, the consummation of the transactions contemplated herein, and the taking of all such other corporate action as shall have been required as a condition to, or in connection with the consummation of the contemplated transactions;

(g) the Escrow Agreement, duly executed by the Company and the Stockholders; and

(h) the Certificate of Merger and Articles of Merger duly executed by the Company.

**2.13 Closing Deliveries by Parent and Buyer** At the Closing, against delivery of, among other things, the Certificates, Buyer and Parent shall deliver to the applicable Stockholders:

(a) the Non-Escrow Shares;

(b) Certificates of the Secretary of State and the taxing authorities of the State of Delaware dated not more than five (5) business days prior to the Closing Date, attesting to the incorporation and good standing of Parent as a corporation in its jurisdiction of incorporation, and to the payment of all state taxes due and owing thereby;

(c) a copy, certified as of the Closing Date by the Secretary or Assistant Secretary of Parent, of the bylaws of Parent and all amendments thereto and resolutions of the Board of Directors of Parent authorizing Parent's execution, delivery and performance of this Agreement, the consummation of the transactions contemplated herein, and the taking of all such other corporate action as shall have been required as a condition to, or in connection with the consummation of the contemplated transactions;

(d) Certificates of the Secretary of State and the taxing authorities of the State of Virginia dated not more than five (5) business days prior to the Closing Date, attesting to the incorporation and good standing of Buyer as a corporation in its jurisdiction of incorporation, and to the payment of all state taxes due and owing thereby;

(e) a copy, certified as of the Closing Date by the Secretary or Assistant Secretary of Buyer, of the resolutions of the Board of Directors of Buyer authorizing Buyer's execution, delivery and performance of this Agreement, the consummation of the transactions contemplated herein, and the taking of all such other corporate action as shall have been required as a condition to, or in connection with the consummation of the contemplated transactions;

(f) Copies, certified by the Secretary of State of Virginia of the Articles of Incorporation of Buyer, and all amendments thereto;

(g) Copies, certified the by Secretary or Assistant Secretary of Buyer as of the Closing Date, of the bylaws of Buyer, and all amendments thereto;

(h) the Escrow Agreement, duly executed by the Parent; and

(i) the Articles of Merger duly executed by the Buyer.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF STOCKHOLDERS**

The Stockholders, jointly and severally, to the best of their Knowledge, hereby each represent and warrant as of the Closing Date to Buyer and Parent as follows:

#### **3.1 Organization and Qualification of the Company.**

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) The Company has all necessary corporate power and authority over the assets now owned by it. The Company is not required to be licensed or qualified in any foreign jurisdiction. The Stockholders have delivered to Buyer complete and correct copies of the charter and bylaws of the Company as in effect as of the Closing Date.

#### **3.2 Capitalization.**

(a) The authorized capital stock of the Company consists of 75,000 shares of Common Stock and 1,000 shares of Preferred Stock. As of the Effective Date, (i) 500 shares of Common Stock are issued and outstanding, (ii) 500 shares of Preferred Stock are designated as Series A Preferred Stock, convertible into an aggregate of 50,000 shares of Common Stock, and all such 500 shares of Series A Preferred Stock are issued and outstanding, and (iii) 128 shares of Preferred Stock are designated as Series B Preferred Stock, convertible into an aggregate of 12,800 shares of Common Stock, and all such 128 shares of Series B Preferred Stock are issued and outstanding.

(b) Except as set forth in the preceding sentence, there are no shares of capital stock of the Company issued and outstanding. All of the Shares have been duly authorized and validly issued and are fully paid and non-assessable. None of the Shares were issued in violation of any preemptive rights or are subject to any preemptive rights of any Person. All of the Shares have been issued and granted in all material respects in compliance with applicable securities Laws and other requirements of Law. No legend or other reference to any Encumbrance appears upon any certificate representing the Shares, except for customary legends with respect to transfer restrictions for restricted securities under federal and state securities Laws. The Stockholders are the sole record holders of the issued and outstanding capital stock of the Company.

(c) Except as set forth in Section 3.2(a), there are no outstanding options, warrants, agreements, conversion rights, preemptive rights or other rights to subscribe for or purchase from the Stockholders or the Company or any contracts or commitments providing for the issuance of, or the granting of rights to acquire, (i) any capital stock or other ownership interests of the Company, including, but not limited to the Shares; or (ii) any securities convertible into or exchangeable for any such capital stock or other ownership interests. There are no outstanding contractual obligations of any of the Stockholders or the Company to transfer, issue, repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests of the Company, including, but not limited to the Shares. The Company neither owns nor has any contract, agreement or understanding to acquire, any equity securities or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

**3.3 Stock Ownership by Stockholders.** The Stockholders have good title to, and are the sole record and beneficial owners of, the Shares and the Shares owned by the Stockholders are free and clear of any and all Encumbrances. The Stockholders are not a party to any voting trusts, Stockholders agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares owned by the Stockholders other than such which will terminate upon the consummation of the transactions contemplated by this Agreement.

**3.4 Authorization; Enforceability.** The execution, delivery and performance of this Agreement by the Stockholders and the Company and the consummation by the Stockholders and the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Stockholders and the Company, respectively. This Agreement has been duly executed and delivered by the Stockholders and the Company, and assuming due authorization, execution and delivery by Buyer and Parent, this Agreement constitutes a valid and binding obligation of the Stockholders and the Company enforceable against the Stockholders and the Company in accordance with its terms, except to the extent that the enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws, or by equitable principles relating to the rights of creditors generally.

**3.5 No Conflict; Governmental Consents.** The execution, delivery and performance of this Agreement by the Stockholders and the Company do not and will not (i) violate, conflict with or result in the breach of any provision of the charter or by-laws of the Company, (ii) conflict with or violate in any material respect any Law or Order applicable to the Stockholders or, to the Knowledge of the Stockholders, the Company, or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance on any of the Shares owned by the Stockholders or on any of the other assets or properties of the Stockholders pursuant to, any note, bond, mortgage, indenture, license, permit, lease, sublease or other Contract to which the Stockholders is a party or by which any of the Shares owned by the Stockholders or any of such other assets or properties is bound or affected, except as would not reasonably be expected to result in a Material Adverse Effect on the Stockholders. The execution, delivery and performance of this Agreement by the Stockholders and, to the Knowledge of the Stockholders, the Company, do not and will not require any Approval or Order of any Governmental Entity.

**3.6 Additional Stockholder Representations.** (a) Each Stockholder represents that it is an “accredited investor” as such term is defined in Rule 501 of Regulation D (“**Regulation D**”) promulgated under the Securities Act and that the Stockholder is able to bear the economic risk of an investment in the Parent Shares. Each Stockholder hereby acknowledges and represents that (i) such Stockholder has knowledge and experience in business and financial matters, prior investment experience, including investment in securities that are non-listed, unregistered and/or not traded on a national securities exchange or the Stockholder has employed the services of a “purchaser representative” (as defined in Rule 501 of Regulation D), attorney and/or accountant to read all of the documents furnished or made available by the Parent to the Stockholder to evaluate the merits and risks of such an investment on the Stockholder’s behalf; (ii) the Stockholder recognizes the highly speculative nature of this investment; and (iii) the Stockholder is able to bear the economic risk that the Stockholder hereby assumes.

(b) Each Stockholder understands that the Parent Shares have not been registered under the Securities Act by reason of a claimed exemption under the provisions of the Securities Act that depends, in part, upon such Stockholder’s investment intention. In connection with the foregoing, each Stockholder hereby represents that the Stockholder is purchasing the Parent Shares for the Stockholder’s own account for investment and not with a view toward the resale or distribution to others. The Stockholder, if an entity, further represents that it was not formed for the purpose of purchasing the Parent Shares. Each Stockholder understands and hereby acknowledges that the Parent is under no obligation to register any of the Parent Shares under the Securities Act or any state securities or “blue sky” laws.

(a) (c) The Stockholders consent to the placement of a legend on any certificate or other document evidencing the Parent Shares that such Parent Shares have not been registered under the Securities Act or any state securities or “blue sky” laws and setting forth or referring to the restrictions on transferability and sale thereof contained in this Agreement. The Stockholder is aware that the Parent will make a notation in its appropriate records with respect to the restrictions on the transferability of such Parent Shares. The legend to be placed on each certificate shall be in form substantially similar to the following:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY APPLICABLE STATE SECURITIES LAWS. SUCH SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES AND MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FILED BY THE ISSUER WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION COVERING SUCH SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION IS NOT REQUIRED

**3.7 Taxes.** During the period beginning on the date of inception through and including the Closing Date (such period, the “**Tax Period**”):

(a) All Tax Returns required to be filed by or with respect to the Company in respect of the Tax Period have been timely filed, and, to the Knowledge of the Stockholders, all such Tax Returns are complete and correct in all material respects. The Company has paid (or there has been paid on its behalf) all Taxes, whether shown on any Tax Returns, that are due from or with respect to it for the periods covered by such Tax Returns and have made all required estimated payments of Tax sufficient to avoid any penalties for underpayment.

(b) To the Knowledge of the Stockholders, no claim has been made, in respect to the Tax Period, by an authority in a jurisdiction where the Company does not file a Tax Return that the Company may be subject to taxation in that jurisdiction and no basis exists for any such claim. There is no proposed assessment and no audit, examination, suit, investigation or similar proceeding pending or to the Knowledge of the Stockholders, proposed or threatened with respect to Taxes of the Company for the Tax Period and, to the Knowledge of the Stockholders, no basis exists therefor.

**3.8 Litigation; Compliance with Laws.**

(a) To the Knowledge of the Stockholders, there is no Action pending or threatened against or affecting any of the Company or its respective assets.

(b) Neither the Stockholders nor the Company are (i) to the Knowledge of the Stockholders, in violation of any applicable Law or (ii) to the Knowledge of the Stockholders, subject to or in default with respect to any Order to which any of them, or any of their respective properties or assets (owned or used), is subject. To the Knowledge of the Stockholders, the Company, since inception, has been in compliance with each Law that is or was applicable to it or use of any of its assets, except as would not reasonably be expected to result in a Material Adverse Effect on the Stockholders.

(c) To the Knowledge of the Stockholders, no Stockholder has received either in its own capacity or as a representative of the Company, since inception, any notice or other communication (whether oral or written) from any Governmental Entity or any other Person regarding (i) any actual, alleged, possible, or potential violation of, or failure to comply with, any Law or (ii) any actual, alleged, possible, or potential obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature, except as would not reasonably be expected to result in a Material Adverse Effect on the Stockholders.

**3.9 No Brokers or Finders.** No agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by or acting on behalf of any of the Stockholders, the Company, or any of their respective Affiliates, in connection with the negotiation, execution or performance of this Agreement or the

transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or such transactions.

### **3.10 Intellectual Property Rights.**

(a) To the Knowledge of the Stockholders, the Company owns or possesses or has the right to use pursuant to a valid and enforceable written license, sublicense, agreement, or permission all Intellectual Property identified in Schedule 3.10(a) (the "**Company Intellectual Property**"). To the Knowledge of the Stockholders, the Company owns or is the valid licensor of all such Company Intellectual Property and each item of the Company Intellectual Property owned by the Company immediately prior to the Closing will be owned or available for use by the Surviving Entity on identical terms and conditions immediately subsequent to the Closing hereunder.

(b) The Company Intellectual Property has not nor, to the Knowledge of the Stockholders, will not interfere with, infringe upon, misappropriate, or otherwise come into conflict with (other than through the Existing Licenses), any Intellectual Property rights of third parties; there are no facts indicating a likelihood of the foregoing; and the Company has never received any charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or conflict (including any claim that the Company must license or refrain from using any Intellectual Property rights of any third party). The Company is not a party to any past, pending or threatened action, lawsuit or other judicial, arbitral or administrative proceeding involving or relating to any Company Intellectual Property, including, without limitation, involving any claim that Company infringed, misappropriated or violated the Intellectual Property Rights of any third party.

(c) The Company has taken all necessary and desirable actions to maintain and protect all of the Company Intellectual Property.

(d) To the Knowledge of the Stockholders, the Company has complied with and is presently in compliance with all foreign, federal, state, local, governmental (including, but not limited to, the Federal Trade Commission and State Attorneys General), administrative, or regulatory laws, regulations, guidelines, and rules applicable to any Company Intellectual Property or to personal information and the Company shall take all steps necessary to ensure such compliance until Closing.

(e) To the Knowledge of the Stockholders, the only licenses with respect to the Company Intellectual Property that have been granted by Company or by any predecessor owner of the Company Intellectual Property to any third party or affiliate that are not expired or otherwise terminated are identified in Schedule 3.10(e) (the "**Existing Licenses**").

(f) To the Knowledge of the Stockholders, the Company Intellectual Property is (i) valid and enforceable and in full force and is not subject to any opposition, cancellation, interference, reissue or reexamination proceeding; (ii) validly applied for and registered; and (iii) not the subject of any judicial, administrative or arbitral order, award, decree, injunction, lawsuit, proceeding or stipulation; and all maintenance fees and annuities required with respect to such Company Intellectual Property to date have been paid in full.

(g) To the Knowledge of the Stockholders, there is no prior art that would invalidate any Company Intellectual Property.

(h) The Company has not sent any notice to or asserted or threatened any action or claim against any third party involving or relating to the Company Intellectual Property.

(i) The Company has not made a previous assignment, transfer or agreement in conflict herewith or constituting a present or future assignment of or encumbrance of any of the Company Intellectual Property other than the obligation to pay Harris Corporation five percent (5%) of the gross amount of any judgment or settlement received by the Company in an action initiated by the Company for infringement of the Intellectual Property identified in Schedule 3.10(a) provided that Harris Corporation complies with all reasonable requests for assistance in connection with such action.

(j) By executing and performing its obligations under this Agreement, Company is not in violation of any agreement between Company and any third party relating to any of the Company Intellectual Property.

**3.11 Disclosure.** To the Knowledge of the Stockholders all factual information (taken as a whole) heretofore or contemporaneously requested by Parent or Buyer and furnished to Parent or Buyer by or on behalf of Stockholders and the Company or their representatives for purposes of or in connection with this Agreement or the transactions contemplated herein was materially true and accurate on the date as of which such information is dated and the Stockholders do not believe such factual information is materially incomplete in any respect.

#### **ARTICLE IV INTENTIONALLY OMITTED**

#### **ARTICLE V REPRESENTATIONS AND WARRANTIES OF PARENT**

Parent and Buyer jointly and severally represent and warrant to the Stockholders as of the Closing Date and agree as follows:

##### **5.1 Organization and Authority of Parent and Buyer.**

(a) Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and the execution, delivery and performance of this Agreement by the Parent and the consummation by Parent of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Parent. The Parent Shares to be issued to the Stockholders as part of the Merger Consideration have been duly authorized by all necessary corporate action on the part of Parent and, upon receipt of the Shares from the Stockholders, at the Effective Time, will be validly issued, fully paid and non-assessable. This Agreement has been duly executed and delivered by Parent, and assuming due authorization, execution and delivery by the Stockholders, the Company and Buyer, this Agreement constitutes a valid and binding obligation of Parent enforceable against Parent in accordance with its terms, except to the extent that the enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws, or by equitable principles relating to the rights of creditors generally.

(b) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Virginia and the execution, delivery and performance of this Agreement by the Buyer and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and assuming due authorization, execution and delivery by the Stockholders, the Company and the Parent, this Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except to the extent

that the enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws, or by equitable principles relating to the rights of creditors generally.

(c) Buyer has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted, except as would not reasonably be expected to result in a Material Adverse Effect on the Buyer. The Buyer is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except for other jurisdictions in which the failure to be so qualified to do business or be in good standing shall not have a Material Adverse Effect. The Buyer has delivered to the Stockholders and the Company complete and correct copies of the charter and bylaws of the Buyer as in effect as of the Closing Date.

(d) The Parent has good title to, and is the sole record and beneficial owner of, 100% of the issued and outstanding shares of the Buyer and such shares are free and clear of any and all Encumbrances. The Parent is not a party to any voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the shares of the Buyer owned by the Parent other than such which will terminate upon the consummation of the transactions contemplated by this Agreement.

## **5.2 Capitalization.**

(a) The authorized capital stock of the Parent consists of 50,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of the date hereof, after giving effect to the Merger and the consummation of the transactions contemplated hereby, the capitalization of the Parent will be as set forth on Schedule 5.2 hereof. All of the shares of Parent common stock and all of the shares of Parent preferred stock, including the Parent Shares, have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of Parent common stock or Parent preferred stock, including the Parent Shares, were issued in violation of any preemptive rights or is subject to any preemptive rights of any Person. No legend or other reference to any Encumbrance appears upon any certificate representing the Merger Consideration, except for customary legends with respect to transfer restrictions for restricted securities under federal and Delaware securities Law.

(b) Except as set forth in the Parent's filings with the SEC or on Schedule 5.2 hereof, there are no outstanding options, warrants, agreements, conversion rights, preemptive rights or other rights to subscribe for or purchase from the Parent, or any plans, contracts or commitments providing for the issuance of, or the granting of rights to acquire, (i) any capital stock or other ownership interests of the Parent, including, but not limited to the Parent Shares; or (ii) any securities convertible into or exchangeable for any such capital stock or other ownership interests. Except as set forth in the Parent's filings with the SEC or on Schedule 5.2 hereof, there are no outstanding contractual obligations or plans of the Parent to transfer, issue, repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests of the Parent. There are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which holders of shares of Parent common stock may vote.

(c) The authorized capital stock of the Buyer consists of 25,000 shares of common stock and 0 shares of preferred stock. As of the date hereof, there are 1,000 shares of common stock outstanding, 100% of which are held by the Parent. No shares of preferred stock are issued and outstanding. All of the shares of Buyer common stock, have been duly authorized and validly issued and are fully paid and non-assessable. None of the Buyer shares, were issued in violation of any preemptive rights or is subject to any preemptive rights of any Person.

(d) There are no outstanding options, warrants, agreements, conversion rights, preemptive rights or other rights to subscribe for or purchase from the Buyer, or any plans, contracts or commitments providing

for the issuance of, or the granting of rights to acquire, (i) any capital stock or other ownership interests of the Buyer, including, but not limited to the Buyer shares; or (ii) any securities convertible into or exchangeable for any such capital stock or other ownership interests. There are no outstanding contractual obligations or plans of the Buyer to transfer, issue, repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests of the Buyer. There are no outstanding bonds, debentures, notes or other indebtedness of Buyer having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which holders of shares of Buyer common stock may vote.

### **5.3 Litigation; Compliance with Laws.**

(a) To the Knowledge of the Buyer, there is no Action pending or threatened against or affecting the Buyer or any of its assets.

(b) To its Knowledge, neither the Parent nor the Buyer is in violation of any applicable Law or, to the Knowledge of the Parent or the Buyer, subject to or in default with respect to any Order to which it, or its properties or assets (owned or used), is subject except as would not reasonably be expected to result in a Material Adverse Effect on the Parent or Buyer, as the case may be. To the Knowledge of the Buyer, at all times since inception, Buyer has been in compliance with each Law that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets, except as would not reasonably be expected to result in a Material Adverse Effect on the Buyer.

(c) To the Knowledge of the Parent and except as may be set forth in the Parent's filings with the SEC, there is no Action pending or threatened against or affecting the Parent or any of its assets.

**5.4 No Conflict; Governmental Consents** The execution, delivery and performance of this Agreement by the Parent and Buyer do not and will not (i) violate, conflict with or result in the breach of any provision of the charter or by-laws of the Parent or Buyer, (ii) conflict with or violate in any material respect any Law or Order applicable to any of the Parent or Buyer, or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance on any of the assets or properties of the Parent or Buyer pursuant to, any note, bond, mortgage, indenture, license, permit, lease, sublease or other Contract to which the Parent or Buyer is a party or by which any of its assets or properties is bound or affected, except as would not reasonably be expected to result in a Material Adverse Effect on the Parent or Buyer.

(b) Except for the listing of the Merger Consideration with The NASDAQ Capital Market, if required, the execution, delivery and performance of this Agreement by the Parent does not and will not require any Approval or Order of any Governmental Entity.

**5.5 SEC Reporting.** Parent has filed all forms, reports, statements, certifications and other documents (including all exhibits, amendments and supplements thereto) required to be filed by it with the SEC pursuant to the Exchange Act or other applicable United States federal securities Laws. None of the Parent's subsidiaries is required to file periodic reports with the SEC. To the Parent's Knowledge, no investigation by the SEC with respect to the Parent or any of its subsidiaries is pending or threatened.

**5.6 Officer and Directors.** To the Parent's Knowledge, none of the officers or directors of Parent or any of its subsidiaries: (i) has been convicted of any felony or misdemeanor or named as a subject of a criminal proceeding within the past ten (10) years (excluding traffic violations and other minor offenses but including in connection with the purchase or sale of any security, involving the making of a false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or

investment adviser); (ii) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five (5) years, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the SEC, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser; (iii) is subject to an order of the SEC entered pursuant to Sections 15(b), 15B(a), or 15B(c) of the Exchange Act, or Section 203(e) or (f) of the Investment Advisers Act of 1940; (iv) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under Section 6 of the Exchange Act or a national securities association registered under Section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or (v) is subject to a United States Postal Service false representation order entered under 39 U.S.C. Section 3005 within the past five (5) years or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. Section 3007 with respect to conduct alleged to have violated 39 U.S.C. Section 3005.

**5.7 No Brokers or Finders.** No agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by or acting on behalf of any of the Parent, the Buyer, or any of their respective Affiliates, in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or such transactions.

**5.8 Disclosure.** To the Knowledge of the Parent and the Buyer all factual information (taken as a whole) heretofore or contemporaneously requested by Stockholders or the Company and furnished to the Stockholders or the Company by or on behalf of the Parent or the Buyer or its representatives for purposes of or in connection with this Agreement or the transactions contemplated herein was materially true and accurate on the date as of which such information is dated and neither the Parent nor the Buyer believes such factual information is materially incomplete in any respect

## **ARTICLE VI ADDITIONAL AGREEMENTS**

### **6.1 Assumption of Risk by Parent and Buyer; No Reliance.**

(a) Each of Parent and Buyer, on behalf of themselves and their respective officers, directors, stockholders and affiliates hereby acknowledge and agree that: (i) it has had sufficient opportunity to conduct and has conducted a thorough due diligence investigation of the Company prior to the date hereof; (ii) the representations and warranties set forth in Article III are, subject to the limited recourse set forth in Articles VII and VIII, for informational purposes only, and, except as set forth in Articles VII and VIII, shall not give rise to any Claim in any manner (including, without limitation, breach of contract); and (iii) it is sophisticated in business transactions of the nature contemplated by this Agreement and understands the risks of engaging in a such a transaction with limited representations and warranties made by the Stockholders and limited recourse for breach thereof.

(b) Each of Parent and Buyer, on behalf of themselves and their respective officers, directors, stockholders and affiliates, hereby acknowledge and agree that (i) neither the Company nor the Stockholders or their respective Affiliates or representatives has made or makes any representation or warranty, express or implied, relating to the Company or the Company's properties or assets or otherwise except for those representations and warranties expressly set forth in Article III and (ii) no Person has been authorized by the Stockholders to make any representation or warranty relating to the Company or its assets or otherwise in connection with the Merger, and if made, such statement must not be relied upon as having been authorized by the Company or the Stockholders.

## **6.2 Notices and Consents**

Each of the Stockholders and Parent agree that, in the event any Approval necessary to preserve the Company's assets is not obtained prior to the Closing, the Stockholders will, subsequent to the Closing, on the reasonable request of Parent and at Parent's sole cost and expense, cooperate with the Surviving Entity and Parent in attempting to obtain such Approval as promptly thereafter as practicable.

**6.3 Taking of Necessary Action; Further Action.** If, at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Entity with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Entity are fully authorized in the name of the Surviving Entity or otherwise to take and will take, all such actions at Parent's expense. ■

**6.4 Stockholders' Obligation to Close.** The Stockholders' obligation to close the transaction set forth in this Agreement is expressly made subject to the satisfaction of the following conditions:

(a) Parent shall have obtained the requisite shareholder approval for the issuance of the Merger Consideration; and

(b) Receipt by Stockholders of the Non-Escrow Shares and receipt by the Escrow Agent of the Escrow Shares.

**6.5 Conditions Precedent.** The Closing of the Merger and related transactions or actions contemplated by this Agreement are expressly subject to and contingent upon the satisfaction of the following conditions precedent (the "**Conditions Precedent**"): (a) Parent shall have obtained the requisite shareholder approval in accordance with the DGCL, the rules of the NASDAQ Stock Market and federal securities laws for the issuance of the Merger Consideration hereunder;

(b) Parent shall have received approval from the NASDAQ Capital Market of an additional listing application covering the Merger Consideration, if required;

(c) the Company shall have a minimum cash balance of Two Million Dollars (\$2,000,000) and no debt;

(d) acquisition by the Company of an additional patent portfolio that is separate from the Company Intellectual Property; and

(e) delivery of a fairness opinion issued by Daniel Gelbtuch relating to the Company Intellectual Property.

**6.6 Further Assurances.** Parent, Buyer and the Stockholders shall (and Parent shall cause the Surviving Entity to) provide reasonable cooperation to each other and their professional auditors with respect to any audit, legal or tax inquiries or procedures following the Closing Date including, without limitation, in order to permit Parent to have prepared, at its sole cost and expense, audited financial statements as required for filing with the SEC.

**6.7 Legal Representation.** (i) Parent and Buyer, (ii) the Company and (iii) the Stockholders each hereto acknowledge that they have been represented by independent legal counsel in the preparation of this Agreement and

Plan of Merger. (i) Parent and Buyer, (ii) the Company and (iii) the Stockholders each hereby explicitly waive any conflict of interest and other allegations that they have not been represented by their own counsel.

**6.8 Financial Matters.** At the Closing Date, all intercompany obligations recorded on the books and records of the Parties, due and owing from the Company to Stockholders, or from Stockholders to the Company shall be cancelled. All bank accounts of the Company shall be maintained and any balances on the date hereof shall be conveyed and transferred to Buyer and the Surviving Entity by virtue of the Merger.

**6.9 Conversion Limitations.** Subject to the beneficial ownership limitations set forth in the certificate of designation of the Parent's Series D Preferred Stock and described in Section 2.5 above, which shall further limit the conversions permitted hereby, each Stockholder agrees not to convert more than its pro rata share of the conversion limit (the "**Conversion Limit**") of the Series D Preferred Stock on any single Trading Day (as defined in the Series D Certificate of Designation). The Conversion Limit is calculated as 15% (the "**Volume Percentage**") of the greater of (i) the trading volume of the Parent's common stock on the Conversion Notice Delivery Date (as defined in the Series D Certificate of Designation) or (ii) the average trading volume of the Parent's common stock for the ten (10) Trading Days immediately prior to the Conversion Notice Delivery Date. If the Parent's common stock is traded at or above \$12 per share on the Conversion Notice Delivery Date, the Volume Percentage shall be increased to 20% for purposes of calculating the Conversion Limit applicable to that day. The Parent and Stockholders agree that the Conversion Limit shall be applied to all holders of the Series D Preferred Stock in the same manner and to the same extent (accounting for each holder's pro rata share), and that any waiver, termination or modification of the Conversion Limit shall affect all holders equally. In the event that the Conversion Limit is waived, terminated or otherwise modified by the Parent, each holder of Series D Preferred Stock shall be entitled to the benefit of such waiver, termination or modification (as the case may be) and shall be entitled to the same revised conversion limit terms at the time of such waiver, termination or modification, provided, however, that if any condition must be satisfied or consideration provided for such waiver, termination or modification, each holder will be required to satisfy such condition or provide such consideration (accounting for each holder's pro rata share) in order to be entitled to the benefits thereof. Notwithstanding anything in this Section 6.9 or in the Series D Certificate of Designation, a holder of the Series D Preferred Stock may convert such shares of Series D Preferred Stock without regards to the Conversion Limit if the stock is traded at or above \$15 on the Conversion Notice Delivery Date. Each certificate evidencing shares of Series D Preferred Stock shall contain a legend reflecting the terms of the restrictions on conversions set forth in this Section 6.9. Notwithstanding anything to the foregoing, in the event of a discrepancy between this Section 6.9 and the terms of the Series D Certificate of Designation, the terms of the Series D Certificate of Designation shall govern.

## **ARTICLE VII TAX MATTERS**

**7.1 Conveyance Taxes.** Parent and Buyer shall pay and be solely responsible for any transfer or gains, sales, use, transfer, value added, stock transfer, and stamp taxes, any transfer, recording, registration, and other fees, and any similar Taxes which become payable in connection with the transactions contemplated by this Agreement, and shall file such applications and documents as shall permit any such Tax to be assessed and paid on or prior to the Closing Date in accordance with any available pre-sale filing procedure. Each party hereto shall execute and deliver all instruments and certificates necessary to enable the other party or parties to comply with the foregoing.

**7.2 Pre-Closing Tax Returns.** The Stockholders shall timely prepare and file all Tax Returns of the Company required to be filed by the Company with respect to a period ending on or before the Closing Date (each such Tax Return, a "**Pre-Closing Tax Return**"). Parent and Buyer shall cause the Company to execute and timely file any Pre-Closing Tax Return prepared in accordance with this Section 7.2 that will be filed after the Closing Date, other than any income consolidated Tax Return for a consolidated group of which the

Stockholders are the common parent. The cost of preparing all Pre-Closing Tax Returns shall be paid by the Stockholders. All such Pre-Closing Tax Returns shall be prepared and filed in a manner consistent with the past practice of the Company unless otherwise required by applicable Law. The Stockholders, the Buyer and the Parent will cooperate in good faith in connection with the exchange of information necessary for the preparation of all Pre-Closing Tax Returns.

**7.3 Straddle Period.** The Parent and Buyer shall timely prepare or cause to be prepared and file or cause to be filed any Tax Returns of the Company required to be filed by the Company, as the case may be, with respect to a period beginning before the Closing Date and ending after the Closing Date (a “**Straddle Period**”) relating to Taxes a portion of which is owed by the Company and the Stockholders with respect to any pre-closing tax period or portion thereof (“**Straddle Period Returns**”). All Straddle Period Returns shall be prepared and filed in a manner consistent with the past practice of the Company unless otherwise required by applicable Law. The Stockholders shall have the right to review and comment on each Straddle Period Return prior to the filing of such return. The Stockholders, Parent and the Buyer agree to consult and resolve in good faith any issues and comments arising as a result of the review of each Straddle Period Return, and mutually to consent to filing as promptly as possible to each Straddle Period Return. The cost of preparing all Straddle Period Returns shall be paid by the Parent or the Buyer.

**7.4 Last Day of Taxable Period.** If the Company is permitted under any applicable foreign, state or local income tax Law to treat the Closing Date as the last day of a taxable period of the Company, the Stockholders and the Parent and Buyer shall treat (and cause their respective Affiliates to treat) the Closing Date as the last day of such taxable period (*i.e.*, a deemed closing of the books for Tax purposes). For all purposes under this Agreement, in the case of Taxes that are payable with respect to any Straddle Period, the portion of any such Tax that is allocable to the portion of the period ending on the close of the Closing Date shall be, in the case of Taxes that are based upon or related to income or receipts, be equal to the amount which would be payable if the taxable year ended on the Closing Date.

**7.5 Tax Cooperation.** The Stockholders, the Parent and the Buyer shall, upon written request of the other, (i) each provide the other with such assistance as may be reasonably requested by any of them in connection with the preparation of any Tax Return, audit, or other examination by any taxing authority or judicial or administrative proceedings relating to liability for Taxes or such returns, (ii) each retain and provide the other with any records or other information that may be relevant to such Tax Returns, audit or examination, proceeding, or determination, and (iii) each provide the other with any final determination of any such audit or examination, proceeding, or determination that affects any amount required to be shown on any such Tax Returns. Without limiting the generality of the foregoing, the Buyer and Parent shall retain until the applicable statutes of limitations (including any extensions) have expired, copies of all Pre-Closing Tax Returns and Straddle Period Returns, supporting work schedules, and other records or information that may be relevant to such returns, and shall not destroy or otherwise dispose of any such records without first providing the Stockholders with a reasonable opportunity to review and copy the same. Each party shall bear its own expenses in complying with the foregoing provisions.

**7.6 Required Notification.** The Buyer shall promptly notify the Stockholders in writing upon receipt by the Buyer or any of its Affiliates of notice of any audits, examinations, adjustments or assessments relating to Taxes with respect to any Pre-Closing Tax Returns and any Straddle Period Returns, and with respect to amounts which would be paid by the Stockholders or for which any of the Buyer or its Affiliates may be entitled to receive indemnity under this Agreement (each, a “**Tax Claim**”). The Stockholders, in their sole discretion, may contest such Tax Claim in any permissible forum and shall otherwise have the sole right at their sole expense to direct, control and settle any administrative or judicial proceedings relating to such Tax Claim, provided that (i) the Stockholders notify the Buyer in writing within twenty (20) days (or if a response to such Tax Claim is required within thirty (30) days and the Internal Revenue Service (or any other applicable state or local tax authority) refuses to grant an extension of at least ten (10) days, fifteen (15) days; provided that the Buyer shall be required to use reasonable efforts to obtain such an extension) of the Buyer's notification of the Stockholders of such Tax Claim of their intent to exercise their right to direct, control, and settle such Tax Claim, (ii) the Buyer shall be entitled to

participate at its sole expense in such administrative or judicial proceedings and (iii) to the extent any settlement of any such proceeding is reasonably expected to increase any Tax to the Buyer or its Affiliates in respect of any Tax not indemnified under this Agreement by the Stockholders at the time of such settlement, the Stockholders may not settle any such proceeding without the prior written consent of the Buyer.

## **ARTICLE VIII INDEMNIFICATION**

### **8.1**     Obligations of Stockholders

(a)     Indemnification by Stockholders. Subject to the limitations set forth in this Section 8.1 and otherwise in this Article VIII, the Stockholders (the “**Stockholders Indemnifying Party**”), agree to indemnify and hold harmless Parent, the Surviving Entity and their respective directors, officers and Affiliates and their successors and assigns (each a “**Parent Indemnified Party**”) from and against any and all Losses of the Parent Indemnified Parties, to the extent directly or indirectly resulting or arising from or based upon:

(i)     breach of any representation or warranty set forth in Article III; and

(ii)    all Taxes to the extent resulting from or relating to the ownership, management or use of and the operation of the Company prior to and including the Closing Date.

(b)     Intentionally Omitted.

(c)     Limitations on Liability. The obligations of the Stockholders under this Section 8.1 shall be subject to the following limitations:

(i)     The Stockholders shall not have any liability to any Parent Indemnified Party with respect to Losses arising out of any of the matters referred to in Section 8.1(a), until such time as the amount of all such liability shall collectively exceed \$10,000 (the “**Threshold**”), whereupon the Losses exceeding the Threshold shall be payable by the Stockholders;

(ii)    Parent waives, on behalf of itself and any Parent Indemnified Party, any right to multiply actual damages or recover consequential, indirect, special, punitive or exemplary damages (including, without limitation, damages for lost profits or loss of business opportunity) arising in connection with or with respect to the indemnification provisions hereof or any right to recovery from any source other than the Escrow Shares. *For the avoidance of doubt, the Stockholders’ indemnification obligation is limited to the Escrow Shares.*

(iii)   In no event shall the Stockholders’ aggregate liability to any Indemnified Party under Section 8.1 exceed the after tax amount of such Claim and all Claims shall be net of any insurance proceeds reasonably expected to be received in respect of Losses subject to such Claim. The Parent Indemnified Parties shall use all reasonable efforts to collect any amounts available under applicable insurance policies with respect to Losses subject to a Claim.

**8.2**     Obligations of Parent. Parent, Buyer and the Surviving Entity (collectively, the “**Parent Indemnifying Parties**”) agree to indemnify and hold harmless the Stockholders and their respective agents, representatives and Affiliates and their successors and assigns (each, a “**Stockholders Indemnified Party**”) from and against any and all Losses of the Stockholders Indemnified Party, directly or indirectly, as a result of, or based upon or arising from:

(a)     the ownership, management and operation of the Company and the Surviving Entity after the Closing Date, except (a) to the extent any such Losses are subject to indemnification by the Stockholders

pursuant to Section 8.1 or (b) to the extent any such Losses are the result of fraud committed by the Stockholders; and

(b) Buyer shall not have any liability to the Stockholders Indemnified Party with respect to Losses arising out of any of the matters referred to in Section 8.2, until such time as the amount of all such liability shall collectively exceed the Threshold, whereupon the Losses exceeding the Threshold shall be payable by Buyer. Also, in no event shall Buyer's aggregate liability under Section 8.2 exceed the after-tax amount of such Claims.

**8.3 Procedure.** A Stockholders Indemnified Party or a Parent Indemnified Party (each, an "Indemnified Party") shall give the Parent Indemnifying Party or Stockholders Indemnifying Party (each, an "Indemnifying Party"), as applicable, notice (a "Claim Notice") of any matter which an Indemnified Party has determined has given or could reasonably give rise to a right of indemnification under this Agreement (a "Claim"), within forty-five (45) days of such determination; provided, however, that any failure of the Indemnified Party to provide such Claim Notice shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent the Indemnifying Party is materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to any Indemnified Party otherwise than under this Article VIII except to the extent the Indemnifying Party is materially prejudiced by such failure. Upon receipt of the Claim Notice, the Indemnifying Party shall be entitled to assume and control the defense of such Claim at its expense if it gives notice of its intention to do so to the Indemnified Party within ten (10) Business Days of the receipt of such Claim Notice from the Indemnified Party; provided, however, that (i) Indemnified Party must approve of the selection of legal counsel by Indemnifying Party, which approval shall not be unreasonably withheld, delayed or conditioned and (ii) if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of the Indemnified Party, in its reasonable discretion, for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party. In the event the Indemnifying Party exercises the right to undertake any such defense against any such Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any such Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party. No such Claim may be settled by the Indemnifying Party without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, delayed or conditioned so long as (a) there is no payment or other consideration required of the Indemnified Party and (b) such settlement does not require or otherwise involve any restrictions on the conduct of Business by the Indemnified Party.

#### **8.4 Survival.**

(a) The representations and warranties of the Stockholders and Parent contained in this Agreement, including the Exhibits and the Schedules to this Agreement, shall survive the Closing until the first (1st) anniversary of the Closing Date. An Indemnifying Party is not required to make any indemnification payment hereunder unless a Claim is delivered to the Indemnifying Party on or before 5:00 p.m. ET of the one year anniversary of the Closing Date, except with respect to Claims of fraud committed by the Indemnifying Party.

(b) Any matter as to which a Claim has been asserted by a Claim Notice to the other party that is pending or unresolved at the end of any applicable limitation period shall continue to be covered by this Article VIII notwithstanding any applicable statute of limitations (which the parties hereby waive) until such matter is finally terminated or otherwise resolved by the parties under this Agreement or by a final, nonappealable judgment of a court of competent jurisdiction and any amounts payable hereunder are finally determined and paid.

**8.5 Notice by Indemnifying Party.** The Indemnifying Party agrees to notify the Indemnified Party of any liabilities, claims or misrepresentations, breaches or other matters covered by this Article VIII upon discovery or receipt of notice thereof (other than such claims from the Indemnified Party).

**8.6 Exclusive Remedy.** Other than rights to equitable relief, to the extent available under applicable law, each of the parties acknowledges and agrees that the sole and exclusive remedy for any Losses arising from Claims described in Sections 8.1 and 8.2 or any other Claims of every nature arising in any manner in connection with this Agreement, shall be indemnification in accordance with this Article VIII.

**8.7 Mitigation.** Prior to the resolution of any Claim for indemnification under this Agreement, the Indemnified Party shall utilize all commercially reasonable efforts, consistent with normal past practices and policies and good commercial practice, to mitigate such Losses.

**8.8 Consequential and Other Damages.** No party shall be liable for any lost profits or consequential, special, punitive, indirect or incidental Losses or damages in connection with this Agreement.

## ARTICLE IX

**9.1 Amendments; Waivers.** This Agreement and any schedule or exhibit attached hereto may be amended only by agreement in writing of all parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

**9.2 Schedules; Exhibits; Integration.** Each schedule and exhibit delivered pursuant to the terms of this Agreement shall be in writing and shall constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such schedules and exhibits, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith.

**9.3 Governing Law** This Agreement, the legal relations between the parties and any Action, whether contractual or non-contractual, instituted by any party with respect to any matter arising between the parties, including but not limited to matters arising under or in connection with this Agreement, such as the negotiation, execution, interpretation, coverage, scope, performance, breach, termination, validity, or enforceability of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York without reference to principles of conflicts of laws. Subject to the provisions of Section 9.15, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Virginia and the Federal Courts of the United States of America located within the Eastern District of Virginia with respect to any matter arising between the parties, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Virginia State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in any manner as may be permitted by applicable Law, shall be valid and sufficient service thereof. With respect to any particular action, suit or proceeding arising between the parties, including but not limited to matters arising under or in connection with this Agreement, venue shall lie solely in any Virginia State court or any Federal Court of the United States of America sitting in the Eastern District of Virginia.

**9.4 No Assignment.** Neither this Agreement nor any rights or obligations under it are assignable without the express written consent of the Stockholders and Parent.

**9.5 Headings.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

**9.6 Counterparts.** This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

**9.7 Publicity and Reports.** The Stockholders and Parent shall coordinate all publicity relating to the transactions contemplated by this Agreement and, except as required by Law, no party shall issue any press release, publicity statement or other public notice relating to this Agreement, or the transactions contemplated by this Agreement, without obtaining the prior consent of each of the Stockholders and Parent.

**9.8 Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of each party, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligation of any third person to any party to this Agreement.

**9.9 Notices.** Any notice or other communication hereunder must be given in writing and (a) delivered in person, (b) transmitted by facsimile or (c) mailed by certified mail, postage prepaid, return receipt requested as follows:

If to Parent or Buyer, addressed to:

Spherix Incorporated  
7927 Jones Branch Drive, Suite 3125  
Tysons Corner, VA 22102  
Phone: 301.897.2540  
Facsimile:

With a copy to:

James E. Baker, Jr.

Baxter, Baker, Sidle, Conn & Jones, P.A.

120 E. Baltimore Street, Suite 2100

Baltimore, Maryland 21202

Telephone: (410) 385-8122

Facsimile: (410) 230-3801

If to Stockholders, addressed to the addresses set forth on the signature page hereto

If to the Company, addressed to:

North South Holdings Inc.

63 Roebling Street, #6B  
Brooklyn, New York 11211

Facsimile:

or to such other address or to such other person as either party shall have last designated by such notice to the other party. Each such notice or other communication shall be effective (i) if given by facsimile, when transmitted to the applicable number so specified in (or pursuant to) this Section 9.9 and an appropriate answerback is received, (ii) if given by mail, three (3) days after such communication is deposited in the mails by certified mail, return receipt requested, with postage prepaid and addressed as aforesaid or (iii) if given by any other means, when actually delivered at such address.

**9.10 Remedies; Waiver.** To the extent permitted by Law, all rights and remedies existing under this Agreement are cumulative to and not exclusive of, any rights or remedies otherwise available under applicable Law. No failure on the part of any party to exercise or delay in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right.

**9.11 Attorney's Fees.** In the event of any Action by any party to enforce against another party a right or claim, each party shall pay its own fees, costs and expenses incurred in such Action, and no arbitrator shall have authority to make an award of attorney's fees in contravention of this provision. Attorney's fees incurred in enforcing any final judgment in respect of this Agreement are recoverable as a separate item.

**9.12 Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Entity, the remaining provisions of this Agreement to the extent permitted by Law shall remain in full force and effect; provided that the essential terms and conditions of this Agreement for all parties remain valid, binding and enforceable. In event of any such determination, the parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes hereof. To the extent permitted by Law, the parties hereby to the same extent waive any provision of Law that renders any provision hereof prohibited or unenforceable in any respect.

**9.13 Entire Agreement.** This Agreement constitutes and includes that entire agreement of the parties with reference to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof. No promise or representation of any kind has been made to any of the parties to this Agreement by any other party or parties to this Agreement or anyone acting for any of such parties, except as is expressly stated in this Agreement.

**9.14 Time is of the Essence.** Time is of the essence in interpreting and enforcing this Agreement.

**9.15 Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by binding arbitration administered before one arbitrator by the American Arbitration Association under its Commercial Arbitration Rules in effect on the date of this Agreement (herein the "AAA Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be selected pursuant to the AAA Rules and shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who is or has been practicing law for at least fifteen (15) years, specializing in general commercial litigation or general corporate and commercial matters and (ii) who has both training and experience as an arbitrator and is generally available to serve as an arbitrator. The arbitration shall be governed by the arbitration law of the Federal Arbitration Act and shall be held in the Eastern District of Virginia.

**9.16** Expenses. All fees and expenses incurred by any party hereto shall be paid by such party.

**9.17** Disclosures. Each exception stated in the Schedules attached hereto shall be deemed to be disclosed under any Section of Article III or Article V specifically identified therein and any other Section or Sections to which such disclosure relates.

*[Remainder of Page Left Intentionally Blank]*

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

**PARENT:**

**SPHERIX INCORPORATED**

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

Name:

Title:

**BUYER:**

**NUTA TECHNOLOGY CORP.**

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

Name:

Title:

**COMPANY:**

**NORTH SOUTH HOLDINGS INC.**

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

Name:

Title:

**SPHERIX INCORPORATED**  
**2013 EQUITY INCENTIVE PLAN**

**1. PURPOSE OF PLAN**

**1.1** The purpose of this 2013 Equity Incentive Plan (this “**Plan**”) of Spherix Incorporated, a Delaware corporation (the “**Corporation**”), is to promote the success of the Corporation and to increase stockholder value by providing an additional means through the grant of awards to attract, motivate, retain and reward selected employees and other eligible persons.

**2. ELIGIBILITY**

**2.1** The Administrator (as such term is defined in Section 3.1) may grant awards under this Plan only to those persons that the Administrator determines to be Eligible Persons. An “**Eligible Person**” is any person who is either: (a) an officer (whether or not a director) or employee of the Corporation or one of its Subsidiaries; (b) a director of the Corporation or one of its Subsidiaries; or (c) an individual consultant who renders bona fide services (other than services in connection with the offering or sale of securities of the Corporation or one of its Subsidiaries in a capital-raising transaction or as a market maker or promoter of securities of the Corporation or one of its Subsidiaries) to the Corporation or one of its Subsidiaries and who is selected to participate in this Plan by the Administrator; *provided, however*, that a person who is otherwise an Eligible Person under clause (c) above may participate in this Plan only if such participation would not adversely affect either the Corporation’s eligibility to use Form S-8 to register under the Securities Act of 1933, as amended (the “**Securities Act**”), the offering and sale of shares issuable under this Plan by the Corporation, or the Corporation’s compliance with any other applicable laws. An Eligible Person who has been granted an award (a “**participant**”) may, if otherwise eligible, be granted additional awards if the Administrator shall so determine. As used herein, “**Subsidiary**” means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Corporation; and “**Board**” means the Board of Directors of the Corporation.

**3. PLAN ADMINISTRATION**

**3.1 The Administrator.** This Plan shall be administered by and all awards under this Plan shall be authorized by the Administrator. The “**Administrator**” means the Board or one or more committees appointed by the Board or another committee (within its delegated authority) to administer all or certain aspects of this Plan. Any such committee shall be comprised solely of one or more directors or such number of directors as may be required under applicable law. A committee may delegate some or all of its authority to another committee so constituted. The Board or a committee comprised solely of directors may also delegate, to the extent permitted by Section 157 of the Delaware General Corporation Law and any other applicable law, to one or more officers of the Corporation, its powers under this Plan (a) to Eligible Persons who will receive grants of awards under this Plan, and (b) to determine the number of shares subject to, and the other terms and conditions of, such awards. The Board may delegate different levels of authority to different committees with administrative and grant authority under this Plan. Unless otherwise provided in the bylaws of the Corporation or the applicable charter of any Administrator: (a) a majority of the members of the acting Administrator shall constitute a quorum, and (b) the affirmative vote of a majority of the members present assuming the presence of a quorum or the unanimous written consent of the members of the Administrator shall constitute due authorization of an action by the acting Administrator.

With respect to awards intended to satisfy the requirements for performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended (the “**Code**”), this Plan shall be administered by a committee consisting solely of two or more outside directors (as this requirement is applied under Section 162(m) of the Code); *provided, however*, that the failure to satisfy such requirement shall not affect the validity of the action of any committee otherwise duly authorized and acting in the matter. Award grants, and transactions in or involving awards, intended to be exempt under Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), must be duly and timely authorized by the Board or a committee consisting solely of two or more non-employee directors (as this requirement is applied under Rule 16b-3 promulgated under the Exchange Act). To the extent required by any applicable stock exchange, this Plan shall be administered by a committee composed entirely of independent directors (within the meaning of the applicable stock exchange). Awards granted to non-employee directors shall not be subject to the discretion of any officer or employee of the Corporation and shall be administered exclusively by a committee consisting solely of independent directors.

**3.2 Powers of the Administrator.** Subject to the express provisions of this Plan, the Administrator is authorized and empowered to do all things necessary or desirable in connection with the authorization of awards and the administration of this Plan (in the case of a committee or delegation to one or more officers, within the authority delegated to that committee or person(s)), including, without limitation, the authority to:

(a) determine eligibility and, from among those persons determined to be eligible, the particular Eligible Persons who will receive awards under this Plan;

(b) grant awards to Eligible Persons, determine the price at which securities will be offered or awarded and the number of securities to be offered or awarded to any of such persons, determine the other specific terms and conditions of such awards consistent with the express limits of this Plan, establish the installments (if any) in which such awards shall become exercisable or shall vest (which may include, without limitation, performance and/or time-based schedules), or determine that no delayed exercisability or vesting is required, establish any applicable performance targets, and establish the events of termination or reversion of such awards;

(c) approve the forms of award agreements (which need not be identical either as to type of award or among participants);

(d) construe and interpret this Plan and any agreements defining the rights and obligations of the Corporation, its Subsidiaries, and participants under this Plan, further define the terms used in this Plan, and prescribe, amend and rescind rules and regulations relating to the administration of this Plan or the awards granted under this Plan;

(e) cancel, modify, or waive the Corporation's rights with respect to, or modify, discontinue, suspend, or terminate any or all outstanding awards, subject to any required consent under Section 8.6.5;

(f) accelerate or extend the vesting or exercisability or extend the term of any or all such outstanding awards (in the case of options or stock appreciation rights, within the maximum ten-year term of such awards) in such circumstances as the Administrator may deem appropriate (including, without limitation, in connection with a termination of employment or services or other events of a personal nature) subject to any required consent under Section 8.6.5;

(g) adjust the number of shares of Common Stock subject to any award, adjust the price of any or all outstanding awards or otherwise change previously imposed terms and conditions, in such circumstances as the Administrator may deem appropriate, in each case subject to compliance with applicable stock exchange requirements, Sections 4 and 8.6 and the applicable requirements of Code Section 162(m) and treasury regulations thereunder with respect to awards that are intended to satisfy the requirements for performance-based compensation under Section 162(m), and provided that in no case (except due to an adjustment contemplated by Section 7 or any repricing that may be approved by stockholders) shall such an adjustment constitute a repricing (by amendment, cancellation and regrant, exchange or other means) of the per share exercise or base price of any stock option or stock appreciation right or other award granted under this Plan, and further provided that any adjustment or change in terms made pursuant to this Section 3.2(g) shall be made in a manner that, in the good faith determination of the Administrator will not likely result in the imposition of additional taxes or interest under Section 409A of the Code;

(h) determine the date of grant of an award, which may be a designated date after but not before the date of the Administrator's action (unless otherwise designated by the Administrator, the date of grant of an award shall be the date upon which the Administrator took the action granting an award);

(i) determine whether, and the extent to which, adjustments are required pursuant to Section 7 hereof and authorize the termination, conversion, substitution, acceleration or succession of awards upon the occurrence of an event of the type described in Section 7;

(j) acquire or settle (subject to Sections 7 and 8.6) rights under awards in cash, stock of equivalent value, or other consideration; and

(k) determine the Fair Market Value (as defined in Section 5.6) of the Common Stock or awards under this Plan from time to time and/or the manner in which such value will be determined.

**3.3 Binding Determinations.** Any action taken by, or inaction of, the Corporation, any Subsidiary, or the Administrator relating or pursuant to this Plan and within its authority hereunder or under applicable law shall be within the absolute discretion of that entity or body and shall be conclusive and binding upon all persons. Neither the Board, the Administrator, nor any Board committee, nor any member thereof or person acting at the direction thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with this Plan (or any award made under this Plan), and all such persons shall be entitled to indemnification and reimbursement by the Corporation in respect of any claim, loss, damage or expense (including, without limitation, legal fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time.

**3.4 Reliance on Experts.** In making any determination or in taking or not taking any action under this Plan, the Administrator may obtain and may rely upon the advice of experts, including professional advisors to the Corporation. The Administrator shall not be liable for any such action or determination taken or made or omitted in good faith based upon such advice.

**3.5 Delegation of Non-Discretionary Functions.** In addition to the ability to delegate certain grant authority to officers of the Corporation as set forth in Section 3.1, the Administrator may also delegate ministerial, non-discretionary functions to individuals who are officers or employees of the Corporation or any of its Subsidiaries or to third parties.

#### **4. SHARES OF COMMON STOCK SUBJECT TO THE PLAN; SHARE LIMIT**

**4.1 Shares Available.** Subject to the provisions of Section 7.1, the capital stock available for issuance under this Plan shall be shares of the Corporation's authorized but unissued Common Stock. For purposes of this Plan, "**Common Stock**" shall mean the common stock of the Corporation and such other securities or property as may become the subject of awards under this Plan, or may become subject to such awards, pursuant to an adjustment made under Section 7.1.

**4.2 Share Limit.** The maximum number of shares of Common Stock that may be delivered pursuant to awards granted to Eligible Persons under this Plan may not exceed 2,800,000 shares of Common Stock (the "**Share Limit**").

The foregoing Share Limit is subject to adjustment as contemplated by Section 4.3, Section 7.1, and Section 8.10.

**4.3 Awards Settled in Cash, Reissue of Awards and Shares.** The Administrator may adopt reasonable counting procedures to ensure appropriate counting, avoid double counting (as, for example, in the case of tandem or substitute awards) and make adjustments in accordance with this Section 4.3. Shares shall be counted against those reserved to the extent such shares have been delivered and are no longer subject to a substantial risk of forfeiture. Accordingly, (i) to the extent that an award under the Plan, in whole or in part, is canceled, expired, forfeited, settled in cash, settled by delivery of fewer shares than the number of shares underlying the award, or otherwise terminated without delivery of shares to the participant, the shares retained by or returned to the Corporation will not be deemed to have been delivered under the Plan and will be deemed to remain or to become available under this Plan; and (ii) shares that are withheld from such an award or separately surrendered by the participant in payment of the exercise price or taxes relating to such an award shall be deemed to constitute shares not delivered and will be deemed to remain or to become available under the Plan. The foregoing adjustments to the Share Limit of this Plan are subject to any applicable limitations under Section 162(m) of the Code with respect to awards intended as performance-based compensation thereunder.

**4.4 Reservation of Shares; No Fractional Shares.** The Corporation shall at all times reserve a number of shares of Common Stock sufficient to cover the Corporation's obligations and contingent obligations to deliver shares with respect to awards then outstanding under this Plan (exclusive of any dividend equivalent obligations to the extent the Corporation has the right to settle such rights in cash). No fractional shares shall be delivered under this Plan. The Administrator may pay cash in lieu of any fractional shares in settlements of awards under this Plan.

## 5. AWARDS

**5.1 Type and Form of Awards.** The Administrator shall determine the type or types of award(s) to be made to each selected Eligible Person. Awards may be granted singly, in combination or in tandem. Awards also may be made in combination or in tandem with, in replacement of, as alternatives to, or as the payment form for grants or rights under any other employee or compensation plan of the Corporation or one of its Subsidiaries. The types of awards that may be granted under this Plan are:

**5.1.1 Stock Options.** A stock option is the grant of a right to purchase a specified number of shares of Common Stock during a specified period as determined by the Administrator. An option may be intended as an incentive stock option within the meaning of Section 422 of the Code (an "**ISO**") or a nonqualified stock option (an option not intended to be an ISO). The award agreement for an option will indicate if the option is intended as an ISO; otherwise it will be deemed to be a nonqualified stock option. The maximum term of each option (ISO or nonqualified) shall be ten (10) years. The per share exercise price for each option shall be not less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of the option. When an option is exercised, the exercise price for the shares to be purchased shall be paid in full in cash or such other method permitted by the Administrator consistent with Section 5.5.

**5.1.2 Additional Rules Applicable to ISOs.** To the extent that the aggregate Fair Market Value (determined at the time of grant of the applicable option) of stock with respect to which ISOs first become exercisable by a participant in any calendar year exceeds \$100,000, taking into account both Common Stock subject to ISOs under this Plan and stock subject to ISOs under all other plans of the Corporation or one of its Subsidiaries (or any parent or predecessor corporation to the extent required by and within the meaning of Section 422 of the Code and the regulations promulgated thereunder), such options shall be treated as nonqualified stock options. In reducing the number of options treated as ISOs to meet the \$100,000 limit, the most recently granted options shall be reduced first. To the extent a reduction of simultaneously granted options is necessary to meet the \$100,000 limit, the Administrator may, in the manner and to the extent permitted by law, designate which shares of Common Stock are to be treated as shares acquired pursuant to the exercise of an ISO. ISOs may only be granted to employees of the Corporation or one of its subsidiaries (for this purpose, the term "subsidiary" is used as defined in Section 424(f) of the Code, which generally requires an unbroken chain of ownership of at least 50% of the total combined voting power of all classes of stock of each subsidiary in the chain beginning with the Corporation and ending with the subsidiary in question). There shall be imposed in any award agreement relating to ISOs such other terms and conditions as from time to time are required in order that the option be an "incentive stock option" as that term is defined in Section 422 of the Code. No ISO may be granted to any person who, at the time the option is granted, owns (or is deemed to own under Section 424(d) of the Code) shares of outstanding Common Stock possessing more than 10% of the total combined voting power of all classes of stock of the Corporation, unless the exercise price of such option is at least 110% of the Fair Market Value of the stock subject to the option and such option by its terms is not exercisable after the expiration of five years from the date such option is granted.

**5.1.3 Stock Appreciation Rights.** A stock appreciation right or "**SAR**" is a right to receive a payment, in cash and/or Common Stock, equal to the number of shares of Common Stock being exercised multiplied by the excess of (i) the Fair Market Value of a share of Common

Stock on the date the SAR is exercised, over (ii) the Fair Market Value of a share of Common Stock on the date the SAR was granted as specified in the applicable award agreement (the “**base price**”). The maximum term of a SAR shall be ten (10) years.

#### **5.1.4 Restricted Shares.**

(a) *Restrictions.* Restricted shares are shares of Common Stock subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the Administrator may impose, which restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise, as the Administrator may determine at the date of grant or thereafter. Except to the extent restricted under the terms of this Plan and the applicable award agreement relating to the restricted stock, a participant granted restricted stock shall have all of the rights of a shareholder, including the right to vote the restricted stock and the right to receive dividends thereon (subject to any mandatory reinvestment or other requirement imposed by the Administrator).

(b) *Certificates for Shares.* Restricted shares granted under this Plan may be evidenced in such manner as the Administrator shall determine. If certificates representing restricted stock are registered in the name of the participant, the Administrator may require that such certificates bear an appropriate legend referring to the terms, conditions and restrictions applicable to such restricted stock, that the Corporation retain physical possession of the certificates, and that the participant deliver a stock power to the Corporation, endorsed in blank, relating to the restricted stock. The Administrator may require that restricted shares are held in escrow until all restrictions lapse

(c) *Dividends and Splits.* As a condition to the grant of an award of restricted stock, subject to applicable law, the Administrator may require or permit a participant to elect that any cash dividends paid on a share of restricted stock be automatically reinvested in additional shares of restricted stock or applied to the purchase of additional awards under this Plan. Unless otherwise determined by the Administrator, stock distributed in connection with a stock split or stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the restricted stock with respect to which such stock or other property has been distributed.

#### **5.1.5 Restricted Share Units.**

(a) *Grant of Restricted Share Units.* A restricted share unit, or “**RSU**”, represents the right to receive from the Corporation on the respective scheduled vesting or payment date for such RSU, one Common Share. An award of RSUs may be subject to the attainment of specified performance goals or targets, forfeitability provisions and such other terms and conditions as the Administrator may determine, subject to the provisions of this Plan. At the time an award of RSUs is made, the Administrator shall establish a period of time during which the restricted share units shall vest and the timing for settlement of the RSU.

(b) *Dividend Equivalent Accounts.* Subject to the terms and conditions of the Plan and the applicable award agreement, as well as any procedures established by the Administrator, prior to the expiration of the applicable vesting period of an RSU, the Administrator may determine to pay dividend equivalent rights with respect to RSUs, in which case, the Corporation shall establish an account for the participant and reflect in that account any securities, cash or other property comprising any dividend or property distribution with respect to the shares of Common Stock underlying each RSU. Each amount or other property credited to any such account shall be subject to the same vesting conditions as the RSU to which it relates. The participant shall have the right to be paid the amounts or other property credited to such account upon vesting of the subject RSU.

(c) *Rights as a Shareholder.* Subject to the restrictions imposed under the terms and conditions of this Plan and the applicable award agreement, each participant receiving RSUs shall have no rights as a shareholder with respect to such RSUs until such time as shares of Common Stock are issued to the participant. No shares of Common Stock shall be issued at the time a RSU is granted, and the Company will not be required to set aside a fund for the payment of any such award. Except as otherwise provided in the applicable award agreement, shares of Common Stock issuable under an RSU shall be treated as issued on the first date that the holder of the RSU is no longer subject to a substantial risk of forfeiture as determined for purposes of Section 409A of the Code, and the holder shall be the owner of such shares of Common Stock on such date. An award agreement may provide that issuance of shares of Common Stock under an RSU may be deferred beyond the first date that the RSU is no longer subject to a substantial risk of forfeiture, provided that such deferral is structured in a manner that is intended to comply with the requirements of Section 409A of the Code.

**5.1.6 Cash Awards.** The Administrator may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, grant cash bonuses (including without limitation, discretionary awards, awards based on objective or subjective performance criteria, awards subject to other vesting criteria or awards granted consistent with Section 5.2 below). Cash awards shall be awarded in such amount and at such times during the term of the Plan as the Administrator shall determine.

**5.1.7 Other Awards.** The other types of awards that may be granted under this Plan include: (a) stock bonuses, performance stock, performance units, dividend equivalents, or similar rights to purchase or acquire shares, whether at a fixed or variable price or ratio related to the Common Stock (subject to the requirements of Section 5.1.1 and in compliance with applicable laws), upon the passage of time, the

occurrence of one or more events, or the satisfaction of performance criteria or other conditions, or any combination thereof; or (b) any similar securities with a value derived from the value of or related to the Common Stock and/or returns thereon.

**5.2 Section 162(m) Performance-Based Awards.** Without limiting the generality of the foregoing, any of the types of awards listed in Sections 5.1.4 through 5.1.7 above may be, and options and SARs granted with an exercise or base price not less than the Fair Market Value of a share of Common Stock at the date of grant (“**Qualifying Options**” and “**Qualifying SARs**,” respectively) typically will be, granted as awards intended to satisfy the requirements for “performance-based compensation” within the meaning of Section 162(m) of the Code (“**Performance-Based Awards**”). The grant, vesting, exercisability or payment of Performance-Based Awards may depend (or, in the case of Qualifying Options or Qualifying SARs, may also depend) on the degree of achievement of one or more performance goals relative to a pre-established targeted level or levels using the Business Criteria provided for below for the Corporation on a consolidated basis or for one or more of the Corporation’s subsidiaries, segments, divisions or business units, or any combination of the foregoing. Such criteria may be evaluated on an absolute basis or relative to prior periods, industry peers, or stock market indices. Any Qualifying Option or Qualifying SAR shall be subject to the requirements of Section 5.2.1 and 5.2.3 in order for such award to satisfy the requirements for “performance-based compensation” under Section 162(m) of the Code. Any other Performance-Based Award shall be subject to all of the following provisions of this Section 5.2.

**5.2.1 Class; Administrator.** The eligible class of persons for Performance-Based Awards under this Section 5.2 shall be officers and employees of the Corporation or one of its Subsidiaries. The Administrator approving Performance-Based Awards or making any certification required pursuant to Section 5.2.4 must be constituted as provided in Section 3.1 for awards that are intended as performance-based compensation under Section 162(m) of the Code.

**5.2.2 Performance Goals.** The specific performance goals for Performance-Based Awards (other than Qualifying Options and Qualifying SARs) shall be, on an absolute or relative basis, established based on such business criteria as selected by the Administrator in its sole discretion (“**Business Criteria**”), including the following: (1) earnings per share, (2) cash flow (which means cash and cash equivalents derived from either (i) net cash flow from operations or (ii) net cash flow from operations, financing and investing activities), (3) total stockholder return, (4) price per share of Common Stock, (5) gross revenue, (6) revenue growth, (7) operating income (before or after taxes), (8) net earnings (before or after interest, taxes, depreciation and/or amortization), (9) return on equity, (10) capital employed, or on assets or on net investment, (11) cost containment or reduction, (12) cash cost per ounce of production, (13) operating margin, (14) debt reduction, (15) resource amounts, (16) production or production growth, (17) resource replacement or resource growth, (18) successful completion of financings, or (19) any combination of the foregoing. To qualify awards as performance-based under Section 162(m), the applicable Business Criterion (or Business Criteria, as the case may be) and specific performance goal or goals (“**targets**”) must be established and approved by the Administrator during the first 90 days of the performance period (and, in the case of performance periods of less than one year, in no event after 25% or more of the performance period has elapsed) and while performance relating to such target(s) remains substantially uncertain within the meaning of Section 162(m) of the Code. Performance targets shall be adjusted to mitigate the unbudgeted impact of material, unusual or nonrecurring gains and losses, accounting changes or other extraordinary events not foreseen at the time the targets were set unless the Administrator provides otherwise at the time of establishing the targets; provided that the Administrator may not make any adjustment to the extent it would adversely affect the qualification of any compensation payable under such performance targets as “performance-based compensation” under Section 162(m) of Code. The applicable performance measurement period may not be less than 3 months nor more than 10 years.

**5.2.3 Form of Payment.** Grants or awards intended to qualify under this Section 5.2 may be paid in cash or shares of Common Stock or any combination thereof.

**5.2.4 Certification of Payment.** Before any Performance-Based Award under this Section 5.2 (other than Qualifying Options and Qualifying SARs) is paid and to the extent required to qualify the award as performance-based compensation within the meaning of Section 162(m) of the Code, the Administrator must certify in writing that the performance target(s) and any other material terms of the Performance-Based Award were in fact timely satisfied.

**5.2.5 Reservation of Discretion.** The Administrator will have the discretion to determine the restrictions or other limitations of the individual awards granted under this Section 5.2 including the authority to reduce awards, payouts or vesting or to pay no awards, in its sole discretion, if the Administrator preserves such authority at the time of grant by language to this effect in its authorizing resolutions or otherwise.

**5.2.6 Expiration of Grant Authority.** As required pursuant to Section 162(m) of the Code and the regulations promulgated thereunder, the Administrator’s authority to grant new awards that are intended to qualify as performance-based compensation within the meaning of Section 162(m) of the Code (other than Qualifying Options and Qualifying SARs) shall terminate upon the first meeting of the Corporation’s stockholders that occurs in the fifth year following the year in which the Corporation’s stockholders first approve this Plan (the “**162(m) Term**”).

**5.2.7 Compensation Limitations.** The maximum aggregate number of shares of Common Stock that may be issued to any Eligible Person during the term of this Plan pursuant to Qualifying Options and Qualifying SARs may not exceed 2,800,000 shares of Common

Stock. The maximum aggregate number of shares of Common Stock that may be issued to any Eligible Person pursuant to Performance-Based Awards granted during the 162(m) Term (other than cash awards granted pursuant to Section 5.1.6 and Qualifying Options or Qualifying SARs) may not exceed 2,000,000 shares of Common Stock. The maximum amount that may be paid to any Eligible Person pursuant to Performance-Based Awards granted pursuant to Sections 5.1.6 (cash awards) during the 162(m) Term may not exceed \$1,000,000.

**5.3 Award Agreements.** Each award shall be evidenced by a written or electronic award agreement in the form approved by the Administrator and, if required by the Administrator, executed by the recipient of the award. The Administrator may authorize any officer of the Corporation (other than the particular award recipient) to execute any or all award agreements on behalf of the Corporation (electronically or otherwise). The award agreement shall set forth the material terms and conditions of the award as established by the Administrator consistent with the express limitations of this Plan.

**5.4 Deferrals and Settlements.** Payment of awards may be in the form of cash, Common Stock, other awards or combinations thereof as the Administrator shall determine, and with such restrictions as it may impose. The Administrator may also require or permit participants to elect to defer the issuance of shares of Common Stock or the settlement of awards in cash under such rules and procedures as it may establish under this Plan. The Administrator may also provide that deferred settlements include the payment or crediting of interest or other earnings on the deferral amounts, or the payment or crediting of dividend equivalents where the deferred amounts are denominated in shares. All mandatory or elective deferrals of the issuance of shares of Common Stock or the settlement of cash awards shall be structured in a manner that is intended to comply with the requirements of Section 409A of the Code.

**5.5 Consideration for Common Stock or Awards.** The purchase price for any award granted under this Plan or the Common Stock to be delivered pursuant to an award, as applicable, may be paid by means of any lawful consideration as determined by the Administrator and subject to compliance with applicable laws, including, without limitation, one or a combination of the following methods:

- services rendered by the recipient of such award;
- cash, check payable to the order of the Corporation, or electronic funds transfer;
- notice and third party payment in such manner as may be authorized by the Administrator;
- the delivery of previously owned shares of Common Stock that are fully vested and unencumbered;
- by a reduction in the number of shares otherwise deliverable pursuant to the award; or
- subject to such procedures as the Administrator may adopt, pursuant to a “cashless exercise” with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of awards.

In the event that the Administrator allows a participant to exercise an award by delivering shares of Common Stock previously owned by such participant and unless otherwise expressly provided by the Administrator, any shares delivered which were initially acquired by the participant from the Corporation (upon exercise of a stock option or otherwise) must have been owned by the participant at least six months as of the date of delivery (or such other period as may be required by the Administrator in order to avoid adverse accounting treatment). Shares of Common Stock used to satisfy the exercise price of an option shall be valued at their Fair Market Value on the date of exercise. The Corporation will not be obligated to deliver any shares unless and until it receives full payment of the exercise or purchase price therefor and any related withholding obligations under Section 8.5 and any other conditions to exercise or purchase, as established from time to time by the Administrator, have been satisfied. Unless otherwise expressly provided in the applicable award agreement, the Administrator may at any time eliminate or limit a participant’s ability to pay the purchase or exercise price of any award by any method other than cash payment to the Corporation.

**5.6 Definition of Fair Market Value.** For purposes of this Plan “**Fair Market Value**” shall mean, unless otherwise determined or provided by the Administrator in the circumstances, the closing price for a share of Common Stock on the trading day immediately before the grant date, as furnished by the NASDAQ Stock Market or other principal stock exchange on which the Common Stock is then listed for the date in question, or if the Common Stock is no longer listed on a principal stock exchange, then by the Over-the-Counter Bulletin Board or OTC Markets . If the Common Stock is no longer listed on the NASDAQ Capital Market or listed on a principal stock exchange or is no longer actively traded on the Over-the-Counter Bulletin Board or OTC Markets as of the applicable date, the Fair Market Value of the Common Stock shall be the value as reasonably determined by the Administrator for purposes of the award in the circumstances.

### **5.7 Transfer Restrictions.**

**5.7.1 Limitations on Exercise and Transfer.** Unless otherwise expressly provided in (or pursuant to) this Section 5.7, by applicable law and by the award agreement, as the same may be amended, (a) all awards are non-transferable and shall not be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance or charge; (b) awards shall be exercised only by the participant; and (c) amounts payable or shares issuable pursuant to any award shall be delivered only to (or for the account of) the participant.

**5.7.2 Exceptions.** The Administrator may permit awards to be exercised by and paid to, or otherwise transferred to, other persons or entities pursuant to such conditions and procedures, including limitations on subsequent transfers, as the Administrator may, in its sole discretion, establish in writing (provided that any such transfers of ISOs shall be limited to the extent permitted under the federal tax laws governing ISOs). Any permitted transfer shall be subject to compliance with applicable federal and state securities laws.

**5.7.3 Further Exceptions to Limits on Transfer.** The exercise and transfer restrictions in Section 5.7.1 shall not apply to:

- (a) transfers to the Corporation,
- (b) the designation of a beneficiary to receive benefits in the event of the participant's death or, if the participant has died, transfers to or exercise by the participant's beneficiary, or, in the absence of a validly designated beneficiary, transfers by will or the laws of descent and distribution,
- (c) subject to any applicable limitations on ISOs, transfers to a family member (or former family member) pursuant to a domestic relations order if approved or ratified by the Administrator,
- (d) subject to any applicable limitations on ISOs, if the participant has suffered a disability, permitted transfers or exercises on behalf of the participant by his or her legal representative, or
- (e) the authorization by the Administrator of "cashless exercise" procedures with third parties who provide financing for the purpose of (or who otherwise facilitate) the exercise of awards consistent with applicable laws and the express authorization of the Administrator.

**5.8 International Awards.** One or more awards may be granted to Eligible Persons who provide services to the Corporation or one of its Subsidiaries outside of the United States. Any awards granted to such persons may, if deemed necessary or advisable by the Administrator, be granted pursuant to the terms and conditions of any applicable sub-plans, if any, appended to this Plan and approved by the Administrator.

**5.9 Vesting.** Subject to Section 5.1.2 hereof, awards shall vest at such time or times and subject to such terms and conditions as shall be determined by the Administrator at the time of grant; *provided, however*, that in the absence of any award vesting periods designated by the Administrator at the time of grant in the applicable award agreement, awards shall vest as to one-third of the total number of shares subject to the award on each of the first, second and third anniversaries of the date of grant.

## **6. EFFECT OF TERMINATION OF SERVICE ON AWARDS**

### **6.1 Termination of Employment.**

**6.1.1** The Administrator shall establish the effect of a termination of employment or service on the rights and benefits under each award under this Plan and in so doing may make distinctions based upon, inter alia, the cause of termination and type of award. If the participant is not an employee of the Corporation or one of its Subsidiaries and provides other services to the Corporation or one of its Subsidiaries, the Administrator shall be the sole judge for purposes of this Plan (unless a contract or the award agreement otherwise provides) of whether the participant continues to render services to the Corporation or one of its Subsidiaries and the date, if any, upon which such services shall be deemed to have terminated.

**6.1.2** For awards of stock options or SARs, unless the award agreement provides otherwise, the exercise period of such options or SARs shall expire: (1) three months after the last day that the participant is employed by or provides services to the Corporation or a Subsidiary (provided; however, that in the event of the participant's death during this period, those persons entitled to exercise the option or SAR pursuant to the laws of descent and distribution shall have one year following the date of death within which to exercise such option or SAR); (2) in the case of a participant whose termination of employment is due to death or disability (as defined in the applicable award agreement), 12 months after the last day that the participant is employed by or provides services to the Corporation or a Subsidiary; and (3) immediately upon a participant's termination for "cause". The Administrator will, in its absolute discretion, determine the effect of all matters and questions relating to a termination of employment, including, but not by way of limitation, the question of whether a leave of absence constitutes a termination of employment and whether a participant's termination is for "cause."

If not defined in the applicable award agreement, "**Cause**" shall mean:

- (i) conviction of a felony or a crime involving fraud or moral turpitude; or
- (ii) theft, material act of dishonesty or fraud, intentional falsification of any employment or Company records, or commission of any criminal act which impairs participant's ability to perform appropriate employment duties for the Corporation; or

- (iii) intentional or reckless conduct or gross negligence materially harmful to the Company or the successor to the Corporation after a Change in Control, including violation of a non-competition or confidentiality agreement; or
- (iv) willful failure to follow lawful instructions of the person or body to which participant reports; or
- (v) gross negligence or willful misconduct in the performance of participant's assigned duties. Cause shall not include mere unsatisfactory performance in the achievement of participant's job objectives.

**6.1.3** For awards of restricted shares, unless the award agreement provides otherwise, restricted shares that are subject to restrictions at the time that a participant whose employment or service is terminated shall be forfeited and reacquired by the Corporation; *provided that*, the Administrator may provide, by rule or regulation or in any award agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to restricted shares shall be waived in whole or in part in the event of terminations resulting from specified causes, and the Administrator may in other cases waive in whole or in part the forfeiture of restricted shares. Similar rules shall apply in respect of RSUs.

**6.2 Events Not Deemed Terminations of Service.** Unless the express policy of the Corporation or one of its Subsidiaries, or the Administrator, otherwise provides, the employment relationship shall not be considered terminated in the case of (a) sick leave, (b) military leave, or (c) any other leave of absence authorized by the Corporation or one of its Subsidiaries, or the Administrator; provided that unless reemployment upon the expiration of such leave is guaranteed by contract or law, such leave is for a period of not more than 3 months. In the case of any employee of the Corporation or one of its Subsidiaries on an approved leave of absence, continued vesting of the award while on leave from the employ of the Corporation or one of its Subsidiaries may be suspended until the employee returns to service, unless the Administrator otherwise provides or applicable law otherwise requires. In no event shall an award be exercised after the expiration of the term set forth in the award agreement.

**6.3 Effect of Change of Subsidiary Status.** For purposes of this Plan and any award, if an entity ceases to be a Subsidiary of the Corporation, a termination of employment or service shall be deemed to have occurred with respect to each Eligible Person in respect of such Subsidiary who does not continue as an Eligible Person in respect of another entity within the Corporation or another Subsidiary that continues as such after giving effect to the transaction or other event giving rise to the change in status.

## 7. ADJUSTMENTS; ACCELERATION

**7.1 Adjustments.** Upon or in contemplation of any of the following events described in this Section 7.1.: any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend) or reverse stock split ("**stock split**"); any merger, arrangement, combination, consolidation, or other reorganization; any spin-off, split-up, or similar extraordinary dividend distribution in respect of the Common Stock (whether in the form of securities or property); any exchange of Common Stock or other securities of the Corporation, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; then the Administrator shall in such manner, to such extent and at such time as it deems appropriate and equitable in the circumstances (but subject to compliance with applicable laws and stock exchange requirements) proportionately adjust any or all of (1) the number and type of shares of Common Stock (or other securities) that thereafter may be made the subject of awards (including the number of shares provided for in this Plan), (2) the number, amount and type of shares of Common Stock (or other securities or property) subject to any or all outstanding awards, (3) the grant, purchase, or exercise price (which term includes the base price of any SAR or similar right) of any or all outstanding awards, (4) the securities, cash or other property deliverable upon exercise or payment of any outstanding awards, and (5) the 162(m) compensation limitations set forth in Section 5.2.7 and (subject to Section 8.8.3(a)) the performance standards applicable to any outstanding awards (provided that no adjustment shall be allowed to the extent inconsistent with the requirements of Code section 162(m)). Any adjustment made pursuant to this Section 7.1 shall be made in a manner that, in the good faith determination of the Administrator, will not likely result in the imposition of additional taxes or interest under Section 409A of the Code. With respect to any award of an ISO, the Administrator may make such an adjustment that causes the option to cease to qualify as an ISO without the consent of the affected participant.

**7.2 Change in Control.** Upon a Change in Control, each then-outstanding option and SAR shall automatically become fully vested, all restricted shares then outstanding shall automatically fully vest free of restrictions, and each other award granted under this Plan that is then outstanding shall automatically become vested and payable to the holder of such award unless the Administrator has made appropriate provision for the substitution, assumption, exchange or other continuation of the award pursuant to the Change in Control. Notwithstanding the foregoing, the Administrator, in its sole and absolute discretion, may choose (in an award agreement or otherwise) to provide for full or partial accelerated vesting of any award upon a Change In Control (or upon any other event or other circumstance related to the Change in Control, such as an involuntary termination of employment occurring after such Change in Control, as the Administrator may determine), irrespective of whether such any such award has been substituted, assumed, exchanged or otherwise continued pursuant to the Change in Control.

For purposes of this Plan, "**Change in Control**" shall be deemed to have occurred if:

- (i) a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Corporation, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or

resulting corporation shall be owned in the aggregate by the stockholders of the Corporation (as of the time immediately prior to the commencement of such offer), any employee benefit plan of the Corporation or its Subsidiaries, and their affiliates;

(ii) the Corporation shall be merged or consolidated with another entity, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting entity shall be owned in the aggregate by the stockholders of the Corporation (as of the time immediately prior to such transaction), any employee benefit plan of the Corporation or its Subsidiaries, and their affiliates;

(iii) the Corporation shall sell substantially all of its assets to another entity that is not wholly owned by the Corporation, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by the stockholders of the Corporation (as of the time immediately prior to such transaction), any employee benefit plan of the Corporation or its Subsidiaries and their affiliates; or

(iv) a Person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Corporation (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Corporation (as of the time immediately prior to the first acquisition of such securities by such Person), any employee benefit plan of the Corporation or its Subsidiaries, and their affiliates.

For purposes of this Section 5(c), ownership of voting securities shall take into account and shall include ownership as determined by applying the provisions of Rule 13d-3(d)(I)(i) (as in effect on the date hereof) under the Exchange Act. In addition, for such purposes, "Person" shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof; provided, however, that a Person shall not include (A) the Company or any of its Subsidiaries; (B) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Subsidiaries; (C) an underwriter temporarily holding securities pursuant to an offering of such securities; or (D) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportion as their ownership of stock of the Company.

Notwithstanding the foregoing, (1) the Administrator may waive the requirement described in paragraph (iv) above that a Person must acquire more than 50% of the outstanding voting securities of the Corporation for a Change in Control to have occurred if the Administrator determines that the percentage acquired by a person is significant (as determined by the Administrator in its discretion) and that waiving such condition is appropriate in light of all facts and circumstances, and (2) no compensation that has been deferred for purposes of Section 409A of the Code shall be payable as a result of a Change in Control unless the Change in Control qualifies as a change in ownership or effective control of the Corporation within the meaning of Section 409A of the Code.

**7.3 Early Termination of Awards.** Any award that has been accelerated as required or permitted by Section 7.2 upon a Change in Control (or would have been so accelerated but for Section 7.4 or 7.5) shall terminate upon such event, subject to any provision that has been expressly made by the Administrator, through a plan of reorganization or otherwise, for the survival, substitution, assumption, exchange or other continuation of such award and provided that, in the case of options and SARs that will not survive, be substituted for, assumed, exchanged, or otherwise continued in the transaction, the holder of such award shall be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding options and SARs in accordance with their terms before the termination of such awards (except that in no case shall more than ten days' notice of accelerated vesting and the impending termination be required and any acceleration may be made contingent upon the actual occurrence of the event).

The Administrator may make provision for payment in cash or property (or both) in respect of awards terminated pursuant to this section as a result of the Change in Control and may adopt such valuation methodologies for outstanding awards as it deems reasonable and, in the case of options, SARs or similar rights, and without limiting other methodologies, may base such settlement solely upon the excess if any of the per share amount payable upon or in respect of such event over the exercise or base price of the award.

**7.4 Other Acceleration Rules.** Any acceleration of awards pursuant to this Section 7 shall comply with applicable legal and stock exchange requirements and, if necessary to accomplish the purposes of the acceleration or if the circumstances require, may be deemed by the Administrator to occur a limited period of time not greater than 30 days before the event. Without limiting the generality of the foregoing, the Administrator may deem an acceleration to occur immediately prior to the applicable event and/or reinstate the original terms of an award if an event giving rise to the acceleration does not occur. Notwithstanding any other provision of the Plan to the contrary, the Administrator may override the provisions of Section 7.2, 7.3, and/or 7.5 by express provision in the award agreement or otherwise. The portion of any ISO accelerated pursuant to Section 7.2 or any other action permitted hereunder shall remain exercisable as an ISO only to the extent the applicable \$100,000 limitation on ISOs is not exceeded. To the extent exceeded, the accelerated portion of the option shall be exercisable as a nonqualified stock option under the Code.

**7.5 Possible Rescission of Acceleration.** If the vesting of an award has been accelerated expressly in anticipation of an event and the Administrator later determines that the event will not occur, the Administrator may rescind the effect of the acceleration as to any then outstanding and unexercised or otherwise unvested awards; *provided, that*, in the case of any compensation that has been deferred for purposes of Section 409A of the Code, the Administrator determines that such rescission will not likely result in the imposition of additional tax or interest under Code Section 409A.

## 8. OTHER PROVISIONS

**8.1 Compliance with Laws.** This Plan, the granting and vesting of awards under this Plan, the offer, issuance and delivery of shares of Common Stock, the acceptance of promissory notes and/or the payment of money under this Plan or under awards are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities law, federal margin requirements) and to such approvals by any applicable stock exchange listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Corporation or one of its Subsidiaries, provide such assurances and representations to the Corporation or one of its Subsidiaries as the Administrator may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.

**8.2 Future Awards/Other Rights.** No person shall have any claim or rights to be granted an award (or additional awards, as the case may be) under this Plan, subject to any express contractual rights (set forth in a document other than this Plan) to the contrary.

**8.3 No Employment/Service Contract.** Nothing contained in this Plan (or in any other documents under this Plan or in any award) shall confer upon any Eligible Person or other participant any right to continue in the employ or other service of the Corporation or one of its Subsidiaries, constitute any contract or agreement of employment or other service or affect an employee's status as an employee at will, nor shall interfere in any way with the right of the Corporation or one of its Subsidiaries to change a person's compensation or other benefits, or to terminate his or her employment or other service, with or without cause. Nothing in this Section 8.3, however, is intended to adversely affect any express independent right of such person under a separate employment or service contract other than an award agreement.

**8.4 Plan Not Funded.** Awards payable under this Plan shall be payable in shares or from the general assets of the Corporation, and no special or separate reserve, fund or deposit shall be made to assure payment of such awards. No participant, beneficiary or other person shall have any right, title or interest in any fund or in any specific asset (including shares of Common Stock, except as expressly otherwise provided) of the Corporation or one of its Subsidiaries by reason of any award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan shall create, or be construed to create, a trust of any kind or a fiduciary relationship between the Corporation or one of its Subsidiaries and any participant, beneficiary or other person. To the extent that a participant, beneficiary or other person acquires a right to receive payment pursuant to any award hereunder, such right shall be no greater than the right of any unsecured general creditor of the Corporation.

**8.5 Tax Withholding.** Upon any exercise, vesting, or payment of any award, the Corporation or one of its Subsidiaries shall have the right at its option to:

(a) require the participant (or the participant's personal representative or beneficiary, as the case may be) to pay or provide for payment of at least the minimum amount of any taxes which the Corporation or one of its Subsidiaries may be required to withhold with respect to such award event or payment; or

(b) deduct from any amount otherwise payable in cash to the participant (or the participant's personal representative or beneficiary, as the case may be) the minimum amount of any taxes which the Corporation or one of its Subsidiaries may be required to withhold with respect to such cash payment.

In any case where a tax is required to be withheld in connection with the delivery of shares of Common Stock under this Plan, the Administrator may in its sole discretion (subject to Section 8.1) grant (either at the time of the award or thereafter) to the participant the right to elect, pursuant to such rules and subject to such conditions as the Administrator may establish, to have the Corporation reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of shares, valued in a consistent manner at their Fair Market Value or at the sales price in accordance with authorized procedures for cashless exercises, necessary to satisfy the minimum applicable withholding obligation on exercise, vesting or payment. In no event shall the shares withheld exceed the minimum whole number of shares required for tax withholding under applicable law.

### **8.6 Effective Date, Termination and Suspension, Amendments.**

**8.6.1 Effective Date and Termination.** This Plan was approved by the Board and became effective on April 1, 2013. Unless earlier terminated by the Board, this Plan shall terminate at the close of business on April 1, 2023. After the termination of this Plan either upon such stated expiration date or its earlier termination by the Board, no additional awards may be granted under this Plan, but previously granted awards (and the authority of the Administrator with respect thereto, including the authority to amend such awards) shall remain outstanding in accordance with their applicable terms and conditions and the terms and conditions of this Plan.

**8.6.2 Board Authorization.** The Board may, at any time, terminate or, from time to time, amend, modify or suspend this Plan, in whole or in part. No awards may be granted during any period that the Board suspends this Plan.

**8.6.3 Stockholder Approval.** To the extent then required by applicable law or any applicable stock exchange or required under Sections 162, 422 or 424 of the Code to preserve the intended tax consequences of this Plan, or deemed necessary or advisable by the Board, this Plan and any amendment to this Plan shall be subject to stockholder approval.

**8.6.4 Amendments to Awards.** Without limiting any other express authority of the Administrator under (but subject to) the express limits of this Plan, the Administrator by agreement or resolution may waive conditions of or limitations on awards to participants that the Administrator in the prior exercise of its discretion has imposed, without the consent of a participant, and (subject to the requirements of Sections 3.2 and 8.6.5) may make other changes to the terms and conditions of awards. Any amendment or other action that would constitute a repricing of an award is subject to the limitations set forth in Section 3.2(g).

**8.6.5 Limitations on Amendments to Plan and Awards.** No amendment, suspension or termination of this Plan or change of or affecting any outstanding award shall, without written consent of the participant, affect in any manner materially adverse to the participant any rights or benefits of the participant or obligations of the Corporation under any award granted under this Plan prior to the effective date of such change. Changes, settlements and other actions contemplated by Section 7 shall not be deemed to constitute changes or amendments for purposes of this Section 8.6.

**8.7 Privileges of Stock Ownership.** Except as otherwise expressly authorized by the Administrator or this Plan, a participant shall not be entitled to any privilege of stock ownership as to any shares of Common Stock not actually delivered to and held of record by the participant. No adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

**8.8 Governing Law; Construction; Severability.**

**8.8.1 Choice of Law.** This Plan, the awards, all documents evidencing awards and all other related documents shall be governed by, and construed in accordance with the laws of the State of Delaware

**8.8.2 Severability.** If a court of competent jurisdiction holds any provision invalid and unenforceable, the remaining provisions of this Plan shall continue in effect.

**8.8.3 Plan Construction.**

(a) *Rule 16b-3.* It is the intent of the Corporation that the awards and transactions permitted by awards be interpreted in a manner that, in the case of participants who are or may be subject to Section 16 of the Exchange Act, qualify, to the maximum extent compatible with the express terms of the award, for exemption from matching liability under Rule 16b-3 promulgated under the Exchange Act. Notwithstanding the foregoing, the Corporation shall have no liability to any participant for Section 16 consequences of awards or events under awards if an award or event does not so qualify.

(b) *Section 162(m).* Awards under Sections 5.1.4 through 5.1.7 to persons described in Section 5.2 that are either granted or become vested, exercisable or payable based on attainment of one or more performance goals related to the Business Criteria, as well as Qualifying Options and Qualifying SARs granted to persons described in Section 5.2, that are approved by a committee composed solely of two or more outside directors (as this requirement is applied under Section 162(m) of the Code) shall be deemed to be intended as performance-based compensation within the meaning of Section 162(m) of the Code unless such committee provides otherwise at the time of grant of the award. It is the further intent of the Corporation that (to the extent the Corporation or one of its Subsidiaries or awards under this Plan may be or become subject to limitations on deductibility under Section 162(m) of the Code) any such awards and any other Performance-Based Awards under Section 5.2 that are granted to or held by a person subject to Section 162(m) will qualify as performance-based compensation or otherwise be exempt from deductibility limitations under Section 162(m).

(c) *Code Section 409A Compliance.* The Board intends that, except as may be otherwise determined by the Administrator, any awards under the Plan are either exempt from or satisfy the requirements of Section 409A of the Code and related regulations and Treasury pronouncements (“**Section 409A**”) to avoid the imposition of any taxes, including additional income or penalty taxes, thereunder. If the Administrator determines that an award, award agreement, acceleration, adjustment to the terms of an award, payment, distribution, deferral election, transaction or any other action or arrangement contemplated by the provisions of the Plan would, if undertaken, cause a participant’s award to become subject to Section 409A, unless the Administrator expressly determines otherwise, such award, award agreement, payment, acceleration, adjustment, distribution, deferral election, transaction or other action or arrangement shall not be undertaken and the related provisions of the Plan and/or award agreement will be deemed modified or, if necessary, rescinded in order to comply with the requirements of Section 409A to the extent determined by the Administrator without the content or notice to the participant. Notwithstanding the foregoing, neither the Company nor the Administrator shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any participant under Section 409A and neither the Company nor the Administrator will have any liability to any participant for such tax or penalty.

(d) *No Guarantee of Favorable Tax Treatment.* Although the Company intends that awards under the Plan will be exempt from, or will comply with, the requirements of Section 409A of the Code, the Company does not warrant that any award under the Plan will qualify

for favorable tax treatment under Section 409A of the Code or any other provision of federal, state, local or foreign law. The Company shall not be liable to any participant for any tax, interest or penalties the participant might owe as a result of the grant, holding, vesting, exercise or payment of any award under the Plan

**8.9 Captions.** Captions and headings are given to the sections and subsections of this Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Plan or any provision thereof.

**8.10 Stock-Based Awards in Substitution for Stock Options or Awards Granted by Other Corporation.** Awards may be granted to Eligible Persons in substitution for or in connection with an assumption of employee stock options, SARs, restricted stock or other stock-based awards granted by other entities to persons who are or who will become Eligible Persons in respect of the Corporation or one of its Subsidiaries, in connection with a distribution, arrangement, business combination, merger or other reorganization by or with the granting entity or an affiliated entity, or the acquisition by the Corporation or one of its Subsidiaries, directly or indirectly, of all or a substantial part of the stock or assets of the employing entity. The awards so granted need not comply with other specific terms of this Plan, provided the awards reflect only adjustments giving effect to the assumption or substitution consistent with the conversion applicable to the Common Stock in the transaction and any change in the issuer of the security. Any shares that are delivered and any awards that are granted by, or become obligations of, the Corporation, as a result of the assumption by the Corporation of, or in substitution for, outstanding awards previously granted by an acquired company (or previously granted by a predecessor employer (or direct or indirect parent thereof) in the case of persons that become employed by the Corporation or one of its Subsidiaries in connection with a business or asset acquisition or similar transaction) shall not be counted against the Share Limit or other limits on the number of shares available for issuance under this Plan, except as may otherwise be provided by the Administrator at the time of such assumption or substitution or as may be required to comply with the requirements of any applicable stock exchange.

**8.11 Non-Exclusivity of Plan.** Nothing in this Plan shall limit or be deemed to limit the authority of the Board or the Administrator to grant awards or authorize any other compensation, with or without reference to the Common Stock, under any other plan or authority.

**8.12 No Corporate Action Restriction.** The existence of this Plan, the award agreements and the awards granted hereunder shall not limit, affect or restrict in any way the right or power of the Board or the stockholders of the Corporation to make or authorize: (a) any adjustment, recapitalization, reorganization or other change in the capital structure or business of the Corporation or any Subsidiary, (b) any merger, arrangement, business combination, amalgamation, consolidation or change in the ownership of the Corporation or any Subsidiary, (c) any issue of bonds, debentures, capital, preferred or prior preference stock ahead of or affecting the capital stock (or the rights thereof) of the Corporation or any Subsidiary, (d) any dissolution or liquidation of the Corporation or any Subsidiary, (e) any sale or transfer of all or any part of the assets or business of the Corporation or any Subsidiary, or (f) any other corporate act or proceeding by the Corporation or any Subsidiary. No participant, beneficiary or any other person shall have any claim under any award or award agreement against any member of the Board or the Administrator, or the Corporation or any employees, officers or agents of the Corporation or any Subsidiary, as a result of any such action.

**8.13 Other Corporation Benefit and Compensation Programs.** Payments and other benefits received by a participant under an award made pursuant to this Plan shall not be deemed a part of a participant's compensation for purposes of the determination of benefits under any other employee welfare or benefit plans or arrangements, if any, provided by the Corporation or any Subsidiary, except where the Administrator expressly otherwise provides or authorizes in writing or except as otherwise specifically set forth in the terms and conditions of such other employee welfare or benefit plan or arrangement. Awards under this Plan may be made in addition to, in combination with, as alternatives to or in payment of grants, awards or commitments under any other plans or arrangements of the Corporation or its Subsidiaries.

**8.14 Prohibition on Repricing.** Subject to Section 4, the Administrator shall not, without the approval of the stockholders of the Corporation (i) reduce the exercise price, or cancel and reissue options so as to in effect reduce the exercise price or (ii) change the manner of determining the exercise price so that the exercise price is less than the fair market value per share of Common Stock.

As adopted by the Board of Directors of Spherix Incorporated on April 1, 2013.

