

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

**AUTHENTIDATE HOLDING CORP**

CIK:[885074](#) | IRS No.: **141673067** | State of Incorporation: **DE** | Fiscal Year End: **0630**  
Type: **8-K** | Act: **34** | File No.: **000-20190** | Film No.: **13535558**  
SIC: **7373** Computer integrated systems design

Mailing Address

CONNELL CORPORATE  
CENTER  
300 CONNELL DRIVE, 5TH  
FLOOR  
BERKELEY HEIGHTS NJ  
07922

Business Address

CONNELL CORPORATE  
CENTER  
300 CONNELL DRIVE, 5TH  
FLOOR  
BERKELEY HEIGHTS NJ  
07922  
9087871700

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

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

**DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): January 15, 2013**

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**AUTHENTIDATE HOLDING CORP.**

**(Exact name of registrant as specified in its charter)**

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**COMMISSION FILE NUMBER: 0-20190**

**DELAWARE**  
**(State or other jurisdiction  
of incorporation or organization)**

**14-1673067**  
**(I.R.S. Employer  
Identification No.)**

**Connell Corporate Center  
300 Connell Drive, 5<sup>th</sup> Floor  
Berkeley Heights, New Jersey 07922**  
**(Address and zip code of principal executive offices)**

**(908) 787-1700**  
**(Registrant's telephone number, including area code)**

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CHECK THE APPROPRIATE BOX BELOW IF THE FORM 8-K FILING IS INTENDED TO SIMULTANEOUSLY SATISFY THE FILING OBLIGATION OF THE REGISTRANT UNDER ANY OF THE FOLLOWING PROVISIONS:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

To the extent required to be disclosed pursuant to this Item 1.01, the information set forth in Item 5.02 of this Current Report on Form 8-K is incorporated herein by reference.

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

(e) On January 15, 2013, Authentidate Holding Corp. (the “company”) entered into agreements with each of its chief executive officer, O’Connell Benjamin, and chief financial officer, William A. Marshall, in order to continue and expand the compensation modification program originally implemented in February 2010. Pursuant to these agreements, both officers agreed to accept a further reduction in their base salary to 70% of their original base salary. The reduction in base salary commenced January 16, 2013 and continues until the first to occur of the company achieving “cash flow breakeven” or January 15, 2014.

Pursuant to these new modification agreements, the term “cash flow breakeven” was modified from the definition adopted when the company originally implemented this program and is now defined to mean that the company has achieved positive cash flow from operations for two consecutive fiscal quarters, determined by reference to the revenues and other amounts received by the company from its operations. The term “cash flow from operations”, however, shall not include (a) amounts received from the sale, lease or disposition of (i) fixed or capital assets, except for amounts received in the ordinary course of business; or (ii) any subsidiary company; (b) capital expenditures; (c) interest income and expense; and (d) other non-operating items as determined in accordance with generally accepted accounting principles in the United States as consistently applied during the periods involved.

In consideration for entering into these agreements, the company granted both executive officers such number of restricted stock units (“RSUs”) as is equal to the total amount of base salary that each agreed to forego pursuant to the new compensation modification agreement for the twelve month period expiring January 15, 2014 divided by the fair value of the company’ s common stock, which is based on the closing price of the company’ s common stock, on the grant date. Each RSU represents the contingent right to receive, upon vesting, one share of the company’ s common stock. Accordingly, we granted our chief executive officer 62,431 RSUs and granted our chief financial officer 55,972 RSUs. The RSUs were granted under the company’ s 2011 Omnibus Equity Incentive Plan (the “2011 Plan”), and except as otherwise provided for in the RSU agreement and compensation modification agreements, the RSUs shall vest upon the date determined that the company achieves cash flow breakeven, as defined above.

Further, in connection with the continuation of the company’ s compensation modification program, all other employees that are subject to salary modifications were granted RSUs under the company’ s 2011 Plan in consideration for the continued salary reduction. The salaries of non-executive employees earning \$110,000 per annum or less will continue to be reduced by 10% until January 15, 2014 and the salaries of the company’ s other non-executive employees will be reduced by an additional 15% for a total reduction of 30% of their original base salary for the twelve month period ending January 15, 2014. In consideration for these reductions, the company awarded these employees RSUs based on the same calculation as applicable to our executive officers. Accordingly, we will grant our non-executive employees a total of up to 462,515 RSUs. The RSUs awarded to the non-executive employees are subject to the same terms and conditions as applicable to our executive officers as described above, except to the extent that the awards granted to our executives provide for accelerated vesting in certain circumstances, as required by their employment agreements with the company.

In addition, in connection with the foregoing, we also amended the vesting provision of “cash flow breakeven performance” applicable to the options granted to our employees (including executive officers) in February 2010, February 2011 and June 2012 (collectively, the “Modification Options”) under the compensation modification program. The changes to the Modification Options are to amend the definition of “cash flow breakeven performance” as used therein to delete the requirement of a specific measurement period for determining whether the company achieves this vesting condition. Accordingly, the Modification Options will not be forfeited in the event the company does not achieve cash flow breakeven performance by September 30, 2013 and will vest as long as the company

achieves cash flow breakeven performance prior to the expiration date of such options (or sooner in accordance with their terms). Each Modification Option previously granted has an initial expiration date of 10 years from the grant date and the company did not extend or adjust the originally stated expiration dates of the Modification Options.

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In addition, on January 15, 2013, the company entered into agreements with each of its chief executive officer and chief financial officer to amend the company's existing employment agreements with these officers. The purpose of the amendments was to update certain provisions of their employment agreements to address compliance with Section 409A of the Internal Revenue Code of 1986, as amended.

The foregoing summaries of the terms of the compensation modification agreements and employment agreement amendments that the company entered into with its chief executive and chief financial officers are qualified by reference to the full text of such agreements, which are filed as exhibits to this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits**

<u>Exhibit</u> <u>No.</u>	<u>Description</u>
10.1	Compensation Modification Agreement with O' Connell Benjamin
10.2	Compensation Modification Agreement with William A. Marshall
10.3	Amendment to Employment Agreement with O' Connell Benjamin
10.4	Amendment to Employment Agreement with William A. Marshall
10.5	Form of Restricted Stock Unit Agreement

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**SIGNATURE**

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.

**AUTHENTIDATE HOLDING CORP.**

By: /s/ O' Connell Benjamin

Name: O' Connell Benjamin

Title: Chief Executive Officer and President

Date: January 17, 2013

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## EXHIBIT INDEX

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10.4	Amendment to Employment Agreement with William A. Marshall
10.5	Form of Restricted Stock Unit Agreement

**COMPENSATION MODIFICATION AGREEMENT**

This Compensation Modification Agreement (the "Agreement") is made as of the 15<sup>th</sup> day of January 2013, by and between O' Connell Benjamin, (hereinafter referred to as the "Employee") and Authentidate Holding Corp., a Delaware corporation with principal offices located at 300 Connell Drive, 5<sup>th</sup> Floor, Berkeley Heights, New Jersey 07922 (hereinafter referred to as the "Company").

WHEREAS, the Employee is currently employed by the Company as its Chief Executive Officer and President and entered into an Employment Agreement dated as of September 10, 2012 setting forth the terms and conditions of his employment (the "Employment Agreement"); and

WHEREAS, as of February 2010, the Company implemented a salary reduction program applicable to its employees in an effort to reduce the Company' s cash expenditures; and

WHEREAS, in February 2010, both the Company and the Employee agreed to modify the rate at which Employee was compensated in accordance with the provisions of a Compensation Modification Agreement entered into as of February 18, 2010 (the "2010 Modification Agreement"); and

WHEREAS, in February 2011, both the Company and the Employee agreed to continue the salary reduction program and entered into a new Compensation Modification Agreement on February 4, 2011 (the "2011 Modification Agreement"); and

WHEREAS, in June 2012, both the Company and the Employee agreed to continue the salary reduction program and entered into a new Compensation Modification Agreement on June 21, 2012 (the "2012 Modification Agreement" and together with the 2010 Modification Agreement and 2011 Modification Agreement, the "Modification Agreement"); and

WHEREAS, the Company wishes to further extend such salary reduction program and to further amend the definition of the term "Cash Flow Breakeven" as such term is used in the Modification Agreement and Employee consents to such measures.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Employee hereby agrees to continue to accept the reduction in his Base Salary (as defined in the Employment Agreement) originally consented to in accordance with the Modification Agreement, provided, however, that commencing on January 16, 2013 (the "Effective Date"), Employee hereby agrees that his reduced Base Salary shall be equal to 70% of the Base Salary payable to him under the Employment Agreement ("Reduced Salary") until the first to occur of (i) January 15, 2014 or (ii) such time as the Company achieves Cash Flow Breakeven, as defined below. Upon the first to occur of the events described in the foregoing sentence, the Base Salary payable to Employee shall revert to the level provided for in the Employment Agreement.
2. Company and Employee agree that for the purpose of determining the Severance Payment, as defined in the Employment Agreement, the term Base Salary shall mean the Employee' s Base Salary as it existed on the day immediately prior to February 1, 2010 and no such amounts shall be calculated by reference to the Reduced Salary.



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3. In consideration of the acceptance of the Reduced Salary by Employee, the Company hereby grants to Employee a number of Restricted Stock Units (the "Awards") as shall be determined by dividing (y) the aggregate maximum reduction of Employee's Base Salary pursuant to this Agreement for the twelve month period ending January 15, 2014 by (z) the fair value of an Award (as determined by reference to the closing price of the Company's common stock on the grant date of January 15, 2013). For the purpose of determining the number of Awards to be granted, the aggregate maximum reduction of Base Salary pursuant to this Agreement shall be equal to the sum of (i) 15% of Employee's Base Salary for the period commencing on the Effective Date and ending September 30, 2013 plus (ii) 30% of Employee's Base Salary for the period commencing October 1, 2013 and ending January 15, 2014. For example, if the Employee's Base Salary is \$290,000 per annum, Employee shall be granted a number of Awards pursuant to the terms of this Agreement based on an additional aggregate maximum reduction of Base Salary of \$56,188. Employee confirms that pursuant to the 2012 Modification Agreement, Employee was granted the 2012 Option (as defined below) in consideration for agreeing to the reduction in Base Salary specified therein for the period of time commencing February 1, 2012 and through September 30, 2013.

The Awards shall be granted under the Company's 2011 Omnibus Equity Incentive Plan (the "2011 Plan") and shall be subject to the terms and conditions thereof and the terms of the Restricted Stock Unit Agreement annexed hereto as Exhibit A, except as such terms may be modified by the Employment Agreement. The Awards shall only vest upon either (A) the date determined in good faith by the Management Resources and Compensation Committee of the Board of Directors that the Company achieves Cash Flow Breakeven (as defined below) or (B) subject to the limitation set forth below, in the event Employee's employment is terminated either (i) by the Company without "Cause" (as such term is defined in the Employment Agreement) or (ii) by the Employee for "Good Reason" (as such term is defined in the Employment Agreement), subject, however to Section 6 of this Agreement. To the extent the Awards granted pursuant to this Agreement would vest in connection with the termination of Employee's employment by the Company without "Cause" or by the Employee for "Good Reason", then notwithstanding anything else which may be set forth in the Employment Agreement, such Awards will vest ratably based on the number of payroll periods which have occurred during the period commencing on the Effective Date and ending January 15, 2014.

4. As used in this Agreement, the term "Cash Flow Breakeven" means that the Company has achieved positive cash flow from operations for two consecutive fiscal quarters, determined by reference to the revenues and other amounts received by the Company from its operations; *provided, however*, that as used herein, the term "cash flow from operations" shall not include (a) amounts received from the sale, lease or disposition of (i) fixed or capital assets, except for amounts received in the ordinary course of business; or (ii) any subsidiary company; (b) capital expenditures; (c) interest income and expense; and (d) other non-operating items as determined in accordance with generally accepted accounting principles in the United States as consistently applied during the periods involved.

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5. In further consideration of the Employee's acceptance of the Reduced Salary, the Company hereby agrees to amend Section 2(a) and 2(b) of each of stock options granted in consideration of the execution by the Employee of each of the 2010 Modification Agreement (the "2010 Option"), the 2011 Modification Agreement (the "2011 Option"), and the 2012 Modification Agreement (the "2012 Option" and together with the 2010 Option and 2011 Option, the "Modification Options") as follows:
- (a) The first sentence of Section 2(a) of each of the Modification Options is hereby amended and restated so that as amended and restated, the first sentence of Section 2(a) of each of the Modification Options shall read as follows:
- "With respect to all of the Shares covered by this Option, this Option may be exercised to purchase all of the Shares solely in the event that either (i) the Company achieves "cash flow breakeven performance", as determined in the reasonable discretion of the Committee in accordance with paragraph 2(b), or (ii) in the event Optionee's employment is terminated prior to the Company's achievement of cash flow breakeven performance either (1) by the Company without "Cause" (as such term is defined in the current employment agreement between the Company and the Optionee (the "Employment Agreement")) or (2) by the Optionee for "Good Reason" (as such term is defined in the Employment Agreement).
- (b) Section 2(b) of each of the Modification Options is hereby amended to delete the phrase "Measurement Period" from the definition of "cash flow breakeven performance".
6. Employee acknowledges and agrees that the arrangements set forth herein shall not constitute "Good Reason" as defined under the Employment Agreement. The Employee agrees and understands that nothing in this Agreement shall confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with the Employee's right or the Company's right to terminate the Employee's employment at any time, with or without cause.
7. Nothing in this Agreement shall create or be construed or interpreted as creating any contract of employment for any term between the Company and Employee.
8. This Agreement sets forth the entire agreement between the parties and supersedes all prior agreements between the parties, whether oral or written, with respect to the subject matter hereof. No change, addition or amendment shall be made hereto, except by written agreement signed by the parties hereto. Except for the amendments agreed upon by the parties as set forth herein, the Employment Agreement has not otherwise been modified by the parties and all other provisions of the Employment Agreement not specifically amended by this Agreement shall remain in full force and effect and are hereby ratified, affirmed and approved. Except as may be expressly set forth herein, nothing herein shall constitute a waiver by either the Company or Employee of all other restrictions, rights or remedies that either may have.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

*Remainder of page is intentionally left blank. Signature page follows.*

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**AUTHENTIDATE HOLDING CORP.**

**EMPLOYEE**

By: /s/ William A. Marshall  
Name: William A. Marshall  
Title: Chief Financial Officer

By: /s/ O' Connell Benjamin  
Name: O' Connell Benjamin

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**ANNEX A**  
**FORM OF RESTRICTED STOCK UNIT AGREEMENT**

- 5 -

**COMPENSATION MODIFICATION AGREEMENT**

This Compensation Modification Agreement (the "Agreement") is made as of the 15<sup>th</sup> day of January 2013, by and between William A. Marshall, (hereinafter referred to as the "Employee") and Authentidate Holding Corp., a Delaware corporation with principal offices located at 300 Connell Drive, 5<sup>th</sup> Floor, Berkeley Heights, New Jersey 07922 (hereinafter referred to as the "Company").

WHEREAS, the Employee is currently employed by the Company as its Chief Financial Officer and Treasurer and had entered into an Employment Agreement dated as of February 15, 2006 setting forth the terms and conditions of his employment (the "Employment Agreement"); and

WHEREAS, as of February 2010, the Company implemented a salary reduction program applicable to its employees in an effort to reduce the Company's cash expenditures; and

WHEREAS, in February 2010, both the Company and the Employee agreed to modify the rate at which Employee was compensated in accordance with the provisions of a Compensation Modification Agreement entered into as of February 18, 2010 (the "2010 Modification Agreement"); and

WHEREAS, in February 2011, both the Company and the Employee agreed to continue the salary reduction program and entered into a new Compensation Modification Agreement on February 4, 2011 (the "2011 Modification Agreement"); and

WHEREAS, in June 2012, both the Company and the Employee agreed to continue the salary reduction program and entered into a new Compensation Modification Agreement on June 21, 2012 (the "2012 Modification Agreement" and together with the 2010 Modification Agreement and 2011 Modification Agreement, the "Modification Agreement"); and

WHEREAS, the Company wishes to further extend such salary reduction program and to further amend the definition of the term "Cash Flow Breakeven" as such term is used in the Modification Agreement and Employee consents to such measures.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Employee hereby agrees to continue to accept the reduction in his Base Salary (as defined in the Employment Agreement) originally consented to in accordance with the Modification Agreement, provided, however, that commencing on January 16, 2013 (the "Effective Date"), Employee hereby agrees that his reduced Base Salary shall be equal to 70% of the Base Salary payable to him under the Employment Agreement ("Reduced Salary") until the first to occur of (i) January 15, 2014 or (ii) such time as the Company achieves Cash Flow Breakeven, as defined below. Upon the first to occur of the events described in the foregoing sentence, the Base Salary payable to Employee shall revert to the level provided for in the Employment Agreement.
2. Company and Employee agree that for the purpose of determining the Severance Payment, as defined in the Employment Agreement, the term Base Salary shall mean the Employee's Base Salary as it existed on the day immediately prior to February 1, 2010 and no such amounts shall be calculated by reference to the Reduced Salary.

- 
3. In consideration of the acceptance of the Reduced Salary by Employee, the Company hereby grants to Employee a number of Restricted Stock Units (the "Awards") as shall be determined by dividing (y) the aggregate maximum reduction of Employee's Base Salary pursuant to this Agreement for the twelve month period ending January 15, 2014 by (z) the fair value of an Award (as determined by reference to the closing price of the Company's common stock on the grant date of January 15, 2013). For the purpose of determining the number of Awards to be granted, the aggregate maximum reduction of Base Salary pursuant to this Agreement shall be equal to the sum of (i) 15% of Employee's Base Salary for the period commencing on the Effective Date and ending September 30, 2013 plus (ii) 30% of Employee's Base Salary for the period commencing October 1, 2013 and ending January 15, 2014. For example, if the Employee's Base Salary is \$260,000 per annum, Employee shall be granted a number of Awards pursuant to the terms of this Agreement based on an additional aggregate maximum reduction of Base Salary of \$50,375. Employee confirms that pursuant to the 2012 Modification Agreement, Employee was granted the 2012 Option (as defined below) in consideration for agreeing to the reduction in Base Salary specified therein for the period of time commencing February 1, 2012 and through September 30, 2013.

The Awards shall be granted under the Company's 2011 Omnibus Equity Incentive Plan (the "2011 Plan") and shall be subject to the terms and conditions thereof and the terms of the Restricted Stock Unit Agreement annexed hereto as Exhibit A, except as such terms may be modified by the Employment Agreement. The Awards shall only vest upon either (A) the date determined in good faith by the Management Resources and Compensation Committee of the Board of Directors that the Company achieves Cash Flow Breakeven (as defined below) or (B) subject to the limitation set forth below, in the event Employee's employment is terminated either (i) by the Company without "Cause" (as such term is defined in the Employment Agreement) or (ii) by the Employee for "Good Reason" (as such term is defined in the Employment Agreement), subject, however to Section 6 of this Agreement. To the extent the Awards granted pursuant to this Agreement would vest in connection with the termination of Employee's employment by the Company without "Cause" or by the Employee for "Good Reason", then notwithstanding anything else which may be set forth in the Employment Agreement, such Awards will vest ratably based on the number of payroll periods which have occurred during the period commencing on the Effective Date and ending January 15, 2014.

4. As used in this Agreement, the term "Cash Flow Breakeven" means that the Company has achieved positive cash flow from operations for two consecutive fiscal quarters, determined by reference to the revenues and other amounts received by the Company from its operations; *provided, however*, that as used herein, the term "cash flow from operations" shall not include (a) amounts received from the sale, lease or disposition of (i) fixed or capital assets, except for amounts received in the ordinary course of business; or (ii) any subsidiary company; (b) capital expenditures; (c) interest income and expense; and (d) other non-operating items as determined in accordance with generally accepted accounting principles in the United States as consistently applied during the periods involved.

- 
5. In further consideration of the Employee's acceptance of the Reduced Salary, the Company hereby agrees to amend Section 2(a) and 2(b) of each of stock options granted in consideration of the execution by the Employee of each of the 2010 Modification Agreement (the "2010 Option"), the 2011 Modification Agreement (the "2011 Option"), and the 2012 Modification Agreement (the "2012 Option" and together with the 2010 Option and 2011 Option, the "Modification Options") as follows:
- (a) The first sentence of Section 2(a) of each of the Modification Options is hereby amended and restated so that as amended and restated, the first sentence of Section 2(a) of each of the Modification Options shall read as follows:
- "With respect to all of the Shares covered by this Option, this Option may be exercised to purchase all of the Shares solely in the event that either (i) the Company achieves "cash flow breakeven performance", as determined in the reasonable discretion of the Committee in accordance with paragraph 2(b), or (ii) in the event Optionee's employment is terminated prior to the Company's achievement of cash flow breakeven performance either (1) by the Company without "Cause" (as such term is defined in the current employment agreement between the Company and the Optionee (the "Employment Agreement")) or (2) by the Optionee for "Good Reason" (as such term is defined in the Employment Agreement).
- (b) Section 2(b) of each of the Modification Options is hereby amended to delete the phrase "Measurement Period" from the definition of "cash flow breakeven performance".
6. Employee acknowledges and agrees that the arrangements set forth herein shall not constitute "Good Reason" as defined under the Employment Agreement. The Employee agrees and understands that nothing in this Agreement shall confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with the Employee's right or the Company's right to terminate the Employee's employment at any time, with or without cause.
7. Nothing in this Agreement shall create or be construed or interpreted as creating any contract of employment for any term between the Company and Employee.
8. This Agreement sets forth the entire agreement between the parties and supersedes all prior agreements between the parties, whether oral or written, with respect to the subject matter hereof. No change, addition or amendment shall be made hereto, except by written agreement signed by the parties hereto. Except for the amendments agreed upon by the parties as set forth herein, the Employment Agreement has not otherwise been modified by the parties and all other provisions of the Employment Agreement not specifically amended by this Agreement shall remain in full force and effect and are hereby ratified, affirmed and approved. Except as may be expressly set forth herein, nothing herein shall constitute a waiver by either the Company or Employee of all other restrictions, rights or remedies that either may have.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

*Remainder of page is intentionally left blank. Signature page follows.*

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**AUTHENTIDATE HOLDING CORP.**

By: /s/ O' Connell Benjamin  
Name: O' Connell Benjamin  
Title: Chief Executive Officer

**EMPLOYEE**

By: /s/ William A. Marshall  
Name: William A. Marshall

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**ANNEX A**  
**FORM OF RESTRICTED STOCK UNIT AGREEMENT**

- 5 -

**AMENDMENT NO. 1  
TO EMPLOYMENT AGREEMENT**

This Amendment (the "Amendment") to the Employment Agreement by and between O'Connell Benjamin ("Employee") and Authentidate Holding Corp. (the "Company"), is made and entered into this 15<sup>th</sup> day of January, 2013.

**RECITALS**

**WHEREAS**, the Company and the Employee have entered into that certain Employment Agreement effective as of September 10, 2012 (the "Original Agreement");

**WHEREAS**, the Company and the Employee wish to make certain changes to the Original Agreement, as described herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**AGREEMENT**

1. Definitions. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Original Agreement.

2. Amendments to Original Agreement. The Original Agreement is hereby amended by adding new Article 20 to the Original Agreement to read as follows:

**ARTICLE XX  
SECTION 409A COMPLIANCE**

20.1 To the extent applicable, it is intended that any amounts payable under this Agreement shall either be exempt from Section 409A of the Code or shall comply with Section 409A (including Treasury regulations and other published guidance related thereto) so as not to subject Employee to payment of any additional tax, penalty or interest imposed under Section 409A of the Code. The provisions of this Agreement shall be construed and interpreted to the maximum extent permitted to avoid the imputation of any such additional tax, penalty or interest under Section 409A of the Code yet preserve (to the nearest extent reasonably possible) the intended benefit payable to Employee. Notwithstanding the foregoing, the Company makes no representations regarding the tax treatment of any payments hereunder, and the Employee shall be responsible for any and all applicable taxes, other than the Company's share of employment taxes on the severance payments provided by the Agreement. Employee acknowledges that Employee has been advised to obtain independent legal, tax or other counsel in connection with Section 409A of the Code.

20.2 Notwithstanding any provisions of this Agreement to the contrary, if Employee is a "specified employee" (within the meaning of Section 409A of the Code and the regulations adopted thereunder) at the time of Employee's separation from service and if any portion of the payments or benefits to be received by Employee upon separation from service would be considered deferred compensation under Section 409A of the Code and the regulations adopted thereunder ("Nonqualified Deferred Compensation"), amounts that would otherwise be payable pursuant to this Agreement during the six-month period immediately following Employee's separation from service that constitute Nonqualified Deferred Compensation and benefits that would otherwise be provided pursuant to this

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Agreement during the six-month period immediately following Employee' s separation from service that constitute Nonqualified Deferred Compensation will instead be paid or made available on the earlier of (i) the first business day of the seventh month following the date of Employee' s separation from service and (ii) Employee' s death. Notwithstanding anything in this Agreement to the contrary, distributions upon termination of Employee' s employment shall be interpreted to mean Employee' s "separation from service" with the Company (as determined in accordance with Section 409A of the Code and the regulations adopted thereunder). Each payment under this Agreement shall be regarded as a "separate payment" and not of a series of payments for purposes of Section 409A of the Code.

20.3 Except as otherwise specifically provided in this Agreement, if any reimbursement to which the Employee is entitled under this Agreement would constitute deferred compensation subject to Section 409A of the Code, the following additional rules shall apply: (i) the reimbursable expense must have been incurred, except as otherwise expressly provided in this Agreement, during the term of this Agreement; (ii) the amount of expenses eligible for reimbursement during any taxable year will not affect the amount of expenses eligible for reimbursement in any other taxable year; (iii) the reimbursement shall be made as soon as practicable after Employee' s submission of such expenses in accordance with the Company' s policy, but in no event later than the last day of Employee' s taxable year following the taxable year in which the expense was incurred; and (iv) the Employee' s entitlement to reimbursement shall not be subject to liquidation or exchange for another benefit.

### 3. Miscellaneous Provisions.

(a) Governing Law. This Amendment shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any conflicts of law principles.

(b) No Other Amendment. Except as expressly provided in this Amendment, the Original Agreement (i) has not otherwise been modified by the parties and (ii) all other terms and conditions of the Original Agreement shall remain in full force and effect and are hereby ratified, affirmed and approved.

(c) Entire Agreement; Amendments. This Amendment constitutes the entire agreement between the parties hereto with respect to its subject matters and supersedes all prior arrangements and understandings, written or oral, between the parties hereto with respect to the transactions contemplated hereby. No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by Employee and by a duly authorized officer of the Company. No waiver by any party to this Agreement or any breach by another party of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same time, any prior time or any subsequent time.

(e) Binding Agreement. This Amendment and all of the provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, devisees, successors and assigns and are not intended to confer upon any other person any rights or remedies hereunder.

(f) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*

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IN WITNESS WHEREOF, the parties to this Amendment have duly executed it as of the date set forth above.

**Authentidate Holding Corp.**

By: /s/ William A. Marshall

Name: William A. Marshall

Title: Chief Financial Officer

**O' Connell Benjamin**

/s/ O' Connell Benjamin

O' Connell Benjamin

**AMENDMENT NO. 1  
TO EMPLOYMENT AGREEMENT**

This Amendment (the "Amendment") to the Employment Agreement by and between William A. Marshall ("Employee") and Authentidate Holding Corp. (the "Company"), is made and entered into this 15<sup>th</sup> day of January, 2013.

**RECITALS**

**WHEREAS**, the Company and the Employee have entered into that certain Employment Agreement effective as of February 15, 2006 (the "Original Agreement");

**WHEREAS**, the Company and the Employee wish to make certain changes to the Original Agreement, as described herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**AGREEMENT**

1. Definitions. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Original Agreement.

2. Amendments to Original Agreement. The Original Agreement is hereby amended by adding new Article 20 to the Original Agreement to read as follows:

**ARTICLE XX  
SECTION 409A COMPLIANCE**

20.1 To the extent applicable, it is intended that any amounts payable under this Agreement shall either be exempt from Section 409A of the Code or shall comply with Section 409A (including Treasury regulations and other published guidance related thereto) so as not to subject Employee to payment of any additional tax, penalty or interest imposed under Section 409A of the Code. The provisions of this Agreement shall be construed and interpreted to the maximum extent permitted to avoid the imputation of any such additional tax, penalty or interest under Section 409A of the Code yet preserve (to the nearest extent reasonably possible) the intended benefit payable to Employee. Notwithstanding the foregoing, the Company makes no representations regarding the tax treatment of any payments hereunder, and the Employee shall be responsible for any and all applicable taxes, other than the Company's share of employment taxes on the severance payments provided by the Agreement. Employee acknowledges that Employee has been advised to obtain independent legal, tax or other counsel in connection with Section 409A of the Code.

20.2 Notwithstanding any provisions of this Agreement to the contrary, if Employee is a "specified employee" (within the meaning of Section 409A of the Code and the regulations adopted thereunder) at the time of Employee's separation from service and if any portion of the payments or benefits to be received by Employee upon separation from service would be considered deferred compensation under Section 409A of the Code and the regulations adopted thereunder ("Nonqualified Deferred Compensation"), amounts that would otherwise be payable pursuant to this Agreement during the six-month period immediately following Employee's separation from service that constitute Nonqualified Deferred Compensation and benefits that would otherwise be provided pursuant to this

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Agreement during the six-month period immediately following Employee' s separation from service that constitute Nonqualified Deferred Compensation will instead be paid or made available on the earlier of (i) the first business day of the seventh month following the date of Employee' s separation from service and (ii) Employee' s death. Notwithstanding anything in this Agreement to the contrary, distributions upon termination of Employee' s employment shall be interpreted to mean Employee' s "separation from service" with the Company (as determined in accordance with Section 409A of the Code and the regulations adopted thereunder). Each payment under this Agreement shall be regarded as a "separate payment" and not of a series of payments for purposes of Section 409A of the Code.

20.3 Except as otherwise specifically provided in this Agreement, if any reimbursement to which the Employee is entitled under this Agreement would constitute deferred compensation subject to Section 409A of the Code, the following additional rules shall apply: (i) the reimbursable expense must have been incurred, except as otherwise expressly provided in this Agreement, during the term of this Agreement; (ii) the amount of expenses eligible for reimbursement during any taxable year will not affect the amount of expenses eligible for reimbursement in any other taxable year; (iii) the reimbursement shall be made as soon as practicable after Employee' s submission of such expenses in accordance with the Company' s policy, but in no event later than the last day of Employee' s taxable year following the taxable year in which the expense was incurred; and (iv) the Employee' s entitlement to reimbursement shall not be subject to liquidation or exchange for another benefit.

### 3. Miscellaneous Provisions.

(a) Governing Law. This Amendment shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any conflicts of law principles.

(b) No Other Amendment. Except as expressly provided in this Amendment, the Original Agreement (i) has not otherwise been modified by the parties and (ii) all other terms and conditions of the Original Agreement shall remain in full force and effect and are hereby ratified, affirmed and approved.

(c) Entire Agreement; Amendments. This Amendment constitutes the entire agreement between the parties hereto with respect to its subject matters and supersedes all prior arrangements and understandings, written or oral, between the parties hereto with respect to the transactions contemplated hereby. No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by Employee and by a duly authorized officer of the Company. No waiver by any party to this Agreement or any breach by another party of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same time, any prior time or any subsequent time.

(e) Binding Agreement. This Amendment and all of the provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, devisees, successors and assigns and are not intended to confer upon any other person any rights or remedies hereunder.

(f) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*

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IN WITNESS WHEREOF, the parties to this Amendment have duly executed it as of the date set forth above.

**Authentidate Holding Corp.**

**William A. Marshall**

By: /s/ O' Connell Benjamin

/s/ William A. Marshall

Name: O' Connell Benjamin

William A. Marshall

Title: Chief Executive Officer

## AUTHENTIDATE HOLDING CORP.

## NOTICE OF GRANT OF RESTRICTED STOCK UNITS

The Participant has been granted an award of Restricted Stock Units (the "**Award**") pursuant to the Authentidate Holding Corp. 2011 Omnibus Equity Incentive Plan (the "**Plan**"), each of which represents the right to receive on the Settlement Date (described below) one (1) share of common stock of Authentidate Holding Corp., par value \$0.001 per share, as follows:

**Participant:****Grant Date:**


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January , 2013

**Number of Restricted Stock Units:**

, subject to adjustment as provided by the Restricted Stock Unit Agreement.

**Settlement Date:**

For each Restricted Stock Unit, except as otherwise provided by the Restricted Stock Unit Agreement, the date on which the units become Vested Units in accordance with the vesting schedule set forth below and the provisions of the Restricted Stock Unit Agreement.

**Vesting Schedule:**

Except as set forth in the Restricted Stock Unit Agreement annexed hereto, provided that the Participant's Services have not terminated prior to the Vesting Date (as defined below), one hundred percent (100%) of the Restricted Stock Units shall vest immediately upon the date determined in good faith by the Management Resources and Compensation Committee of the Board of Directors that the Company achieves Cash Flow Breakeven (as defined below) (the "**Vesting Date**").

As used herein, "**Cash Flow Breakeven**" means that the Company has achieved positive cash flow from operations for two consecutive fiscal quarters, determined by reference to the revenues and other amounts received by the Company from its operations; *provided, however*; that as used herein, the term "cash flow from operations" shall not include (a) amounts received from the sale, lease or disposition of (i) fixed or capital assets, except for amounts received in the ordinary course of business; or (ii) any subsidiary company; (b) capital expenditures; (c) interest income and expense; and (d) other non-operating items as determined in accordance with generally accepted accounting principles in the United States as consistently applied during the periods involved.



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By their signatures below, the Company and the Participant agree that the Award is governed by this Notice of Grant of Restricted Stock Units and by the provisions of the Plan and the Restricted Stock Unit Agreement, both of which are made a part of this document. The Participant represents that the Participant has read and is familiar with the provisions of the Plan and Restricted Stock Unit Agreement, and hereby accepts the Award subject to all of their respective terms and conditions.

**AUTHENTIDATE HOLDING CORP.**

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

**PARTICIPANT**

\_\_\_\_\_  
Signature

Date \_\_\_\_\_, 2013

ATTACHMENTS: 2011 Omnibus Equity Incentive Plan  
Restricted Stock Units Agreement

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**AUTHENTIDATE HOLDING CORP.**

**RESTRICTED STOCK UNIT AGREEMENT**

Authentidate Holding Corp. has granted to the Participant named in the *Notice of Grant of Restricted Stock Units* (the “**Grant Notice**”) to which this Restricted Stock Unit Agreement (this “**Agreement**”) is attached an Award consisting of Restricted Stock Units (the “**Units**”) subject to the terms and conditions set forth in the Grant Notice and this Agreement. The Award has been granted pursuant to and shall in all respects be subject to the terms and conditions of the Authentidate Holding Corp. 2011 Omnibus Equity Incentive Plan (the “**Plan**”), as in effect on the Grant Date, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Agreement, the Plan and a prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of the shares issuable pursuant to the Award (the “**Plan Prospectus**”) and (b) accepts the Award subject to all of the terms and conditions of the Grant Notice, this Agreement and the Plan.

**1. DEFINITIONS AND CONSTRUCTION.**

**1.1 Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned in the Grant Notice or the Plan. The term “**Company**” shall mean Authentidate Holding Corp., a Delaware corporation, and any successor company (or a subsidiary or parent thereof), including any Acquiror (as defined in Section 8).

**1.2 Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

**2. ADMINISTRATION.**

All questions of interpretation concerning the Grant Notice, this Agreement and the Plan shall be determined by the Management Resources and Compensation Committee of the Board of Directors of the Authentidate Holding Corp. (the “**Committee**”). All determinations by the Committee shall be final and binding upon all persons having an interest in the Award as provided by the Plan. Any officer of the Company shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided such officer has apparent authority with respect to such matter, right, obligation, or election.

**3. THE AWARD.**

**3.1 Grant of Units.** On the Grant Date, the Participant shall acquire, subject to the provisions of this Agreement, the Number of Restricted Stock Units set forth in the Grant Notice, subject to adjustment as provided in Section 9. Each Unit represents a right to receive one (1) share of Common Stock of the Company (the “**Shares**”) on the date determined in accordance with the Grant Notice and this Agreement.

**3.2 No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Units or Shares issued upon settlement of the Units, the consideration for which shall be past services actually rendered

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and/or future services to be rendered to the Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to the Company or for its benefit having a value not less than the par value of the Shares issued upon settlement of the Units.

#### **4. VESTING OF UNITS.**

**4.1** The Units shall vest and become “Vested Units” as provided in Vesting Schedule in the Grant Notice provided you remain continuously employed by the Company or its subsidiaries through the Vesting Date, except as may be expressly provided for in a written agreement between the Company and the Participant. All vested amounts shall be paid by the Company in Shares, on a one-for-one basis for each Unit, subject to applicable tax withholding, as soon as administratively feasible but in any event no later than (i) the end of the year in which the vesting date occurs, or (ii) 2.5 months after the vesting date. Unless otherwise set forth in a written agreement between the Company and the Participant, upon any termination of your Service with the Company, the Units granted to you hereunder that were not vested on the date of such termination of continuous Service will be forfeited at no cost to the Company, and you will have no further right, title or interest in the Units or the Shares to be issued in respect of the Award. To the extent a written agreement between the Company and Participant provides for the vesting of the Units upon the termination of the Participant’s Service with the Company, the Vested Units shall be delivered to the Participant as soon as administratively feasible following the termination of the Participant’s Service with the Company in accordance with the terms and conditions of such written agreement between the Company and the Participant, but in any event no later than (i) the end of the year in which the Participant’s Service terminated, or (ii) 2.5 months after the date the of termination of Participant’s Service.

**4.2** Notwithstanding the foregoing, however, and except as may be expressly provided in a written agreement between Participant and Company, in the event that, prior to the Vesting Date, the Participant dies or his or her continuous Service is terminated due to Disability, the Participant (or his or her estate, as appropriate) will receive, as of the date of (a) Participant’s death or (b) the termination of the Participant’s continuous Service due to Disability, such number of Vested Units prorated from the Grant Date and through the date of such death or Disability, based on the number of completed months of Service during the twelve month period commencing on the Grant Date, divided by 12. If the Participant’s continuous Service terminates due to death or Disability subsequent to the 12 month anniversary of the Grant Date, then this Award will vest in full upon the termination of Participant’s continuous Service due to death or Disability. Units which become Vested Units in accordance with this Section 4.2 shall be settled in accordance with Section 4.1. For purposes of this Agreement, “Disability” means the Participant’s becoming disabled within the meaning of Section 22(e)(3) of the Code or, if applicable, a written employment agreement between the Participant and the Company. The Committee may require such proof of Disability as the Committee in its sole and absolute discretion deems appropriate.

#### **5. COMPANY REACQUISITION RIGHT.**

Except to the extent otherwise provided in an agreement between the Company and the Participant, in the event that the Participant’s Services terminate for any reason or no reason, with or without cause, the Participant shall forfeit and the Company shall automatically reacquire all Units which are not, as of the time of such termination, Vested Units (“*Unvested Units*”), and the Participant shall not be entitled to any payment therefor (the “*Company Reacquisition Right*”).

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## **6. SETTLEMENT OF THE AWARD.**

**6.1 Issuance of Shares.** Subject to the provisions of Section 4 and 6.3 below, the Company shall issue to the Participant on the Settlement Date with respect to each Vested Unit to be settled on such date one (1) Share. Shares issued in settlement of the Units shall not be subject to any restriction on transfer other than any such restriction as may be required pursuant to Section 6.3, Section 7, the Company's insider trading policies, any federal, state or foreign law or any contractual obligation to which the Participant is subject (such as a "lock-up" or "market stand-off" agreement).

**6.2 Beneficial Ownership of Shares; Registration of Shares.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice any or all Shares acquired by the Participant pursuant to the settlement of the Units. Except as provided by the preceding sentence and subject to Section 11, the Shares issued upon settlement of the Units shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

**6.3 Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of Shares upon settlement of the Units shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. If the issuance of Shares upon settlement of the Units would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Shares may then be listed, then no such Shares may be issued unless and until all such laws, regulations and stock exchange requirements have been satisfied in full. As a condition to the settlement of the Award, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

**6.4 Fractional Shares.** The Company shall not be required to issue fractional Shares upon the settlement of the Units and the Committee shall, in its discretion, determine an equivalent benefit for any fractional shares or fractional shares that might be created upon the settlement of the Units.

## **7. TAX CONSEQUENCES.**

**7.1 In General.** The Participant acknowledges that the Company has not advised the Participant regarding the Participant's income tax liability in connection with the grant or vesting of the Units and the delivery of Shares in connection therewith. The Participant has reviewed with the Participant's own tax advisors the federal, state, and local and tax consequences of the grant and vesting of the Units and the delivery of Shares in connection therewith as contemplated by this Award. The Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) shall be responsible for the Participant's own tax liability that may arise as a result of the transactions contemplated by this Award.

**7.2 Payment of Tax Withholding.** Regardless of any action the Company takes with respect to any or all federal, state, or local income tax, social insurance, payroll tax, payment on account or other tax-related withholding regarding the Award ("***Tax-Related Items***"), you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and remains your responsibility and that the Company (i) makes no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including the vesting or payment of the Award, the subsequent sale of Shares acquired pursuant to the payment of Shares under the Award and the receipt of any dividends; and (ii) does not commit to structure the terms of the Award to reduce or eliminate your liability for Tax-Related Items. You hereby authorize the Company to withhold all applicable Tax-Related

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Items legally payable by you from your wages or other cash compensation paid to you by the Company, or from payment otherwise owed to you under this Award. Alternatively, or in addition, if permissible under local law and expressly authorized by the Committee, the Company may (i) sell or arrange for the sale of Shares that you acquire to meet the withholding obligation for Tax-Related Items, and/or (ii) withhold Shares, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum withholding amount (based on the fair market value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates). Finally, you shall pay to the Company any amount of Tax-Related Items that the Company may be required to withhold as a result of your participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to deliver any Shares if you fail to comply with your obligations in connection with the Tax-Related Items as described in this section.

**7.3 Application of Section 409A of the Code.** This Award is intended to comply with section 409A of the Internal Revenue Code of 1986, as amended (the “*Code*”) and shall in all respects be administered in accordance with section 409A of the Code. In no event shall the Participant, directly or indirectly, designate the calendar year of distribution. The terms “cease to be employed” or “termination of employment,” or words of similar import, as used herein, for purposes of any payments that are payments of deferred compensation subject to Section 409A of the Code, shall mean “separation from service” as defined in Section 409A of the Code. To the extent any payment or settlement that is a payment of deferred compensation subject to Section 409A of the Code is contingent upon a “change in control,” such payment or settlement shall only occur if the event giving rise to the change in control would also constitute a change in ownership or effective control of the Company, or a change in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A of the Code. The vesting of the Award shall not be affected by the preceding sentence. In the event that this Award fails to satisfy the requirements of Section 409A of the Code (and the applicable Treasury regulations promulgated thereunder) and is otherwise not exempt from, and therefore deemed to be deferred compensation subject to, Section 409A of the Code, and if you are a “specified employee” (within the meaning set forth Section 409A(a)(2)(B)(i) of the Code) as of the date of your separation from service (within the meaning of Treasury Regulation Section 1.409A-1(h)), then the issuance of any Shares that would otherwise be made upon the date of the separation from service or within the first six months thereafter will not be made on the originally scheduled dates and will instead be issued in a lump sum on the date that is six months and one day after the date of the separation from service (or, if earlier, within 15 days after your death), with the balance of the shares issued thereafter in accordance with the original vesting and issuance schedule set forth above, but if and only if such delay in the issuance of the shares is necessary to avoid the imposition of taxation on you in respect of the shares under Section 409A of the Code. This Award may be amended without the consent of the Participant in any respect deemed in good-faith by the Board of Directors or the Committee to be necessary in order to preserve compliance with section 409A of the Code.

#### **8. EFFECT OF CHANGE IN CONTROL ON AWARD.**

In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or subsidiary or parent thereof, as the case may be (the “*Acquiror*”), may, without the consent of the Participant, assume or continue the Company’s rights and obligations with respect to all or any portion of the outstanding Units or substitute for all or any portion of the outstanding Units substantially equivalent rights with respect to the Acquiror’s stock.

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## **9. ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company and the requirements of Section 409A of the Code to the extent applicable, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of Shares, exchange of Shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number of Units subject to the Award and/or the number and kind of shares to be issued in settlement of the Units, in order to prevent dilution or enlargement of the Participant's rights under the Award. Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Committee as contemplated in Section 12.2 of the Plan, and its determination shall be final, binding and conclusive.

## **10. RIGHTS AS A STOCKHOLDER OR EMPLOYEE.**

The Participant shall have no rights as a stockholder with respect to any Shares which may be issued in settlement of the Units until the date of the issuance of such Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such certificate is issued, except as provided in Section 9 and you shall receive no benefit with respect to any cash dividend, stock dividend or other distribution that does not result from an adjustment as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue providing Services or interfere in any way with any right of the Company to terminate the Participant's Services at any time. The right of the Company to terminate at will the Participant's Service at any time for any reason is specifically reserved.

## **11. LEGENDS.**

The Company may at any time determine to issue certificates representing the Shares issued pursuant to this Agreement rather than issue uncertificated Shares and the Company may at any time place legends referencing any applicable restrictions under federal, state or foreign securities law or required under any contractual obligations (as contemplated under Section 6.1) on all certificates representing Shares issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing Shares acquired pursuant to settlement of the Units in the possession of the Participant in order to carry out the provisions of this Section.

## **12. MISCELLANEOUS PROVISIONS.**

**12.1 Termination or Amendment.** The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may adversely affect the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A of the Code. No amendment or addition to this Agreement shall be effective unless in writing.

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**12.2 Nontransferability of the Award.** Prior to the issuance of Shares on the applicable Settlement Date, neither the Award nor any Units subject to the Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

**12.3 Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

**12.4 Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

**12.5 Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided by the Participant to the Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature to the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

The Plan documents may be delivered to the Participant electronically. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company. The Participant acknowledges that the Participant has read this section and consents to the electronic delivery of the Plan documents and Grant Notice. The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company in writing of such revoked consent or revised e-mail address. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents.

**12.6 Integrated Agreement.** The Grant Notice, this Agreement and the Plan, together with any employment, service or other agreement between the Participant and the Company referring to the Award, shall constitute the entire understanding and agreement of the Participant and the Company with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Company with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Grant Notice, this Agreement and the Plan shall survive any settlement of the Award and shall remain in full force and effect.

**12.7 Applicable Law.** This Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware.

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**12.8 Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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This Restricted Stock Unit Agreement will be deemed to be signed by you upon the signing by you of the Restricted Stock Unit Grant Notice to which it is attached.