FORM 8-K

Current report filing

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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): January 9, 2013

APACHE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**1-4300**	**41-0747868**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

2000 Post Oak Boulevard
Suite 100
Houston, Texas 77056-4400
(Address of principal executive offices) (Zip Code)

Registrant’ s telephone number, including area code: (713) 296-6000

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

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

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

On January 9, 2013, the Stock Plan Committee of the board of directors of Apache Corporation (“Apache”) granted incentive awards, effective as of January 9, 2013, to substantially all management and professional employees of Apache and its subsidiaries, including certain of the executive officers named in Apache’ s 2012 Proxy Statement. These grants were made pursuant to Apache’ s existing 2011 Omnibus Equity Compensation Plan (the “Omnibus Plan”), which was approved by Apache’ s stockholders in May 2011. Each management and professional employee and officer received a 2013 Performance Program (“2013 Performance”) award, which was granted in performance-based, at-risk, restricted stock units intended to link the grantee’ s potential compensation to Apache’ s performance over a specified future period. The 2013 Performance awards are designed to attract, retain and incentivize executives and other employees while aligning their interests with the interests of Apache’ s stockholders. The form of award agreement for the 2013 Performance awards is attached as Exhibit 10.1.

The 2013 Performance award is part of an annual performance-based incentive compensation program, initiated in 2010, whereby each year the Stock Plan Committee will authorize a conditional grant of restricted stock units to employees, including named executive officers, based on a target percentage of the grantee’ s annual base salary determined immediately prior to the beginning of a three-year performance period. The performance period for the 2013 Performance award begins on January 1, 2013, and ends on December 31, 2015. The number of restricted stock units received at the end of the performance period will depend on a peer company comparison of total shareholder return. The peer companies for the 2013 Performance Program are: Anadarko Petroleum Corporation, BP plc, Canadian Natural Resources Ltd., Chesapeake Energy Corporation, Chevron Corporation, ConocoPhillips Company, Devon Energy Corporation, EnCana Corporation, Eni SpA, EOG Resources, Inc., Exxon Mobil Corporation, Hess Corporation, Marathon Oil Corporation, Murphy Oil Corporation, Noble Energy Inc., Occidental Petroleum Corporation, Royal Dutch Shell plc, and Talisman Energy Inc. Should consolidation occur among any peer group companies during the performance period, the Stock Plan Committee will determine the appropriate adjustments to measure Apache’ s total shareholder return for the performance period. Total shareholder return for Apache and each of the peer companies is determined by dividing (i) the sum of the cumulative amount of a company’ s dividends for the performance period and the average per share closing price of the company’ s stock for the 60 trading days at the end of the performance period minus the average per share closing price of the company’ s stock for the 60 trading days preceding the beginning of the performance period; by (ii) the average per share closing price of the company’ s stock for the 60 trading days preceding the beginning of the performance period.

Depending on Apache’ s total shareholder return compared to the total shareholder return of the peer companies, the grantee’ s conditional grant of restricted stock units will be adjusted by a factor ranging from 0 to 2.0 times the amount of the conditional grant. For the 2013 Performance award, 50% of the adjusted grant, if any, will vest at the close of the performance period (December 31, 2015), 25% will vest on December 31, 2016, and 25% will vest on December 31, 2017. Upon vesting, Apache will issue shares of Apache’ s common stock as settlement for the restricted stock units, net of the shares withheld for tax purposes.

Payout of the 2013 Performance award depends on the grantee remaining employed throughout the applicable performance period and the vesting period. Except as described below, a cessation of employment prior to the end of the performance period will result in the forfeiture of the entire amount of the conditional grant. If the grantee voluntarily leaves the employment of Apache, or is terminated for any reason or no reason during the vesting period, the unvested grants shall thereafter be forfeited. However, if the grantee dies or becomes totally and permanently disabled during the performance period, the conditional grant shall vest immediately at one times the amount of the conditional grant. If the grantee dies or is totally and permanently disabled during the vesting period, then the entire amount of the award will vest immediately. In the event of a grantee' s involuntary termination or voluntary termination with cause (as defined in the Omnibus Plan, but generally including voluntary termination due to, among other things, a diminution in the grantee' s compensation or job responsibilities and authority) upon a change of control (as defined in the Omnibus Plan) during the performance period, the 2013 Performance awards shall immediately vest in the number of restricted stock units determined by multiplying the conditional grant by the applicable multiple based upon Apache' s actual total shareholder return compared to the total shareholder return of its peers for the performance period, measured as of the grantee' s termination date. If the change of control occurs during the vesting period, the entire amount of the award vests immediately upon a grantee' s involuntary termination or voluntary termination with cause.

In addition to those awards made to management and professional employees of Apache, 2013 Performance awards were made to the named executive officers who were employed by Apache on the grant date, as follows: G. Steven Farris was granted a 2013 Performance award of 59,839 restricted stock units, Roger B. Plank and Rodney J. Eichler each were granted a 2013 Performance award of 24,894 restricted stock units, Thomas P. Chambers was granted a 2013 Performance award of 10,976 restricted stock units, and Jon A. Jeppesen did not receive a 2013 Performance award.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Form of 2013 Performance Program Agreement, dated January 9, 2013, between Registrant and each of G. Steven Farris, Rodney J. Eichler, Roger B. Plank, and Thomas P. Chambers.

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.

APACHE CORPORATION

Date: January 11, 2013

/s/ Thomas P. Chambers

Thomas P. Chambers
Executive Vice President and Chief Financial Officer

INDEX TO EXHIBITS

Exhibit No.	Description
10.1	Form of 2013 Performance Program Agreement, dated January 9, 2013, between Registrant and each of G. Steven Farris, Rodney J. Eichler, Roger B. Plank, and Thomas P. Chambers.

Exhibit 10.1

SCHEDULE A

Apache Corporation
2013 Performance Program
AWARD NOTICE

Recipient Name:	[Name]
Company:	Apache Corporation
Notice:	A summary of the terms of Conditional Grants of Restricted Stock Units ("RSUs") under the 2013 Performance Program is set out in this notice (the "Award Notice") but subject always to the terms of the Apache Corporation 2011 Omnibus Equity Compensation Plan (the "Plan") and the 2013 Performance Program Agreement (the "Agreement"). In the event of any inconsistency between the terms of this Award Notice, the terms of the Plan and the Agreement, the terms of the Plan and the Agreement shall prevail. Selected Eligible Persons have been awarded a conditional grant of Apache Corporation RSUs in accordance with the terms of the Plan and the Agreement. Details of the RSUs which you are conditionally entitled to receive is provided to you in this Award Notice and maintained on your account at netbenefits.fidelity.com
Type of Award:	A conditional award of RSUs based on a target percentage of annual base salary determined immediately prior to the beginning of the Performance Period derived from job level (the "Conditional Grant").
Restricted Stock Unit:	A Restricted Stock Unit ("RSU") as defined in the Plan and meaning the right granted to the Recipient of the Conditional Grant, as adjusted at the end of the Performance Period, to receive one share of Stock for each Restricted Stock Unit at the end of the specified Vesting Period.
Stock:	The $0.625 par value common stock of the Company or as otherwise defined in the Plan.
Grant:	A Conditional Grant related to ______ Restricted Stock Units (Target Amount)
Grant Date:	January 9, 2013
Conditions:	Subject always to the terms of the Plan and the Agreement, the Conditional Grant of RSUs shall be made as of the Grant Date. At

the end of the Performance Period, the Committee shall derive and confirm the number of Conditional Grant RSUs that will actually be awarded as RSUs to the Recipient based upon measurement of total shareholder return ("TSR") of Stock as compared to a designated Peer Group during the Performance Period, provided that the Recipient remains an Eligible Person and employed by the Company as of the final day of the Performance Period. Once granted at the conclusion of the Performance Period, such RSUs shall remain subject to a vesting schedule (as set forth below). Once vested, the Recipient shall be paid the value of his or her RSUs in shares of Stock (net of shares withheld for applicable tax withholdings) provided that the Recipient remains employed by the Company during the vesting period including the vesting date.

Performance Measure: The performance measure for the Conditional Grant is Apache Corporation' s TSR over the Performance Period compared to the TSR of the Company' s Peer Group over the Performance Period. TSR shall be determined by dividing (i) the sum of the cumulative amount of a company' s Dividends for the Performance Period (assuming same-day reinvestment into the company' s common stock on the ex-dividend date) and the company' s End Price at the end of the Performance Period minus the Begin Price at the beginning of the Performance Period, by (ii) the Begin Price at the beginning of the Performance Period.

Begin Price = the average per share closing price of a share or share equivalent on the applicable stock exchange for the 60 business (trading) days preceding the beginning of the Performance Period.

End Price = the average per share closing price of a share or share equivalent on the applicable stock exchange for the last 60 business (trading) days of the Performance Period.

Dividend = dividends paid throughout the Performance Period.

Stock Price = the closing price for the day and will be adjusted for stock splits, spin-offs, mergers or any other corporate securities transaction affecting stock price, as determined by the Committee.

At the end of the Performance Period, the Peer Group companies and the Company will be ranked together based on their TSR for the Performance Period from the highest TSR being number 1 to the lowest TSR being the number of Peer Group companies, including the Company, remaining in the group at the end of the Performance Period. Based on the Company' s relative TSR rank amongst the Peer Group companies for the Performance Period, Recipient will be issued RSUs as determined by the Company' s percentile rank as follows:

Rank Against Peers	Multiple of Target Amount (Conditional Number of RSUs Granted)
1	2.00
2	1.90
3	1.80
4	1.70
5	1.60
6	1.50
7	1.40
8	1.30
9	1.20
10	1.10
11	1.00
12	0.90
13	0.80
14	0.70
15	0.55
16	0
17	0
18	0
19	0

Performance Period: The three-year period commencing January 1, 2013 and ending December 31, 2015.

Peer Group: For the Performance Period, the following companies shall comprise the peer group of companies (applicable ticker symbol included):

APC	Anadarko Petroleum Corporation	EOG	EOG Resources, Inc.
BP	BP plc	XOM	Exxon Mobil Corporation
CNQ	Canadian Natural Resources Ltd.	HES	Hess Corporation
CHK	Chesapeake Energy Corporation	MRO	Marathon Oil Corporation
CVX	Chevron Corporation	MUR	Murphy Oil Corporation
COP	ConocoPhillips Company	NBL	Noble Energy Inc.
DVN	Devon Energy Corporation	OXY	Occidental Petroleum Corporation
ECA	EnCana Corporation	RDS-A	Royal Dutch Shell plc
E	Eni SpA	TLM	Talisman Energy Inc.

Should consolidation among any Peer Group companies in the marketplace occur during the Performance Period, the Committee will determine the appropriate adjustments to accommodate the reduced number of Peer Group companies for the Performance Period. Should a Change of Control of the Company occur during the Performance Period, the Committee will determine the appropriate adjustments to measure Apache Corporation' s TSR for the Performance Period. The Peer Group companies for any particular Performance Period shall be determined at the commencement of such Performance Period.

Vesting: Except upon a change of control (as described below), death, or total and permanent disability (as described below), cessation of employment during the Performance Period shall result in the immediate forfeiture of the entire amount of the Conditional Grant. To the extent all or a part of a Conditional Grant RSU award is earned as of the end of the Performance Period, an award equal to the Final Amount shall be made in RSUs to the Recipient as soon as administratively practical, but not later than March 15 following the end of the Performance Period. Any such RSUs awarded shall vest in accordance with the following schedule, provided that the Recipient remains employed as an Eligible Person as of such vesting date:

At the close of the Performance Period – 50% vested.

12 months following the close of the Performance Period – an additional 25% vested.

24 months following the close of the Performance Period – an additional 25% vested.

Except as described below, cessation of employment during the Vesting Period will result in the immediate forfeiture of all unvested RSUs. Vesting is accelerated to 100% upon the Recipient’ s death or total and permanent Disability during the Performance Period or the subsequent Vesting Period. Upon death or total and permanent Disability during the Performance Period, the number of RSUs (and related shares of Stock) granted shall be deemed to be 1.00 times the Conditional Grant amount of RSUs (the Target Amount). Upon vesting, the applicable shares of Stock, subject to required tax withholding, shall be transferred by the Company to the Recipient within thirty (30) days of the vesting date.

Vesting is accelerated to 100% upon a Recipient’ s Involuntary Termination or Voluntary Termination with Cause occurring on or after a Change of Control during the Vesting Period. Upon vesting, the applicable shares of Stock, subject to required tax withholding, shall be transferred by the Company to the Recipient within thirty (30) days of the vesting date.

In the event of the Recipient’ s Involuntary Termination or Voluntary Termination with Cause which occurs (i) on or after a Change of Control of the Company and (ii) on or prior to the end of the Performance Period, the Recipient will become 100% fully vested upon the occurrence of his Involuntary Termination or Voluntary Termination with Cause on or after the Change of Control in the number of RSUs determined by applying the multiple under the Performance Measure determined through the date of the Recipient’ s Involuntary Termination or Voluntary Termination with Cause (based upon actual TSR results as of such date) to the Target Amount. Upon vesting, the applicable shares of Stock, subject to required tax withholding, shall be transferred by the Company to the Recipient within thirty (30) days of the later of (i) the date of the Recipient’ s Involuntary Termination or Voluntary Termination with Cause or (ii) the end of the Performance Period. Notwithstanding the foregoing, if the payment of the Final Amount is subject to Internal Revenue Code Section 409A, payment will not occur until the earlier of (1) the date payment would have been due if the Change of Control had not occurred or (2) the date that the Change of Control constitutes a “change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation” within the meaning of Internal Revenue Code Section 409A(a)(2)(A)(v).

Withholding:	A portion of the Stock subject to each RSU will be withheld to cover required taxes, and the net number of shares of Stock will be paid to the Recipient.
Acceptance	Please complete the on-line grant acceptance as promptly as possible to accept or reject your Conditional Grant. You can access this through your account at netbenefits.fidelity.com. By accepting your Conditional Grant, you will have agreed to the terms and conditions set forth in the Agreement and the terms and conditions of the Plan. If you do not accept your grant you will be unable to receive your Conditional Grant or the related RSUs.

Apache Corporation
2013 Performance Program Agreement

This 2013 Performance Program Agreement (the "Agreement") relating to a conditional grant of Restricted Stock Units (as defined in the rules of the Apache Corporation 2011 Omnibus Equity Compensation Plan (the "Plan") (the "Conditional Grant"), dated as of the Grant Date set forth in the Notice of Award under the 2013 Performance Program attached as Schedule A hereto (the "Award Notice"), is made between Apache Corporation (together with its Affiliates, the "Company") and each Recipient. The Award Notice is included in and made part of this Agreement.

In this Agreement and each Award Notice, unless the context otherwise requires, words and expressions shall have the meanings given to them in the Plan except as herein defined.

Definitions

"Award Notice" means the separate notice given to each Recipient specifying the Target Amount for that individual.

"Base Salary" means, with regard to any Recipient, such Recipient' s annual base compensation as an employee of the Company determined immediately prior to the beginning of the Performance Period, without regard to any bonus, pension, profit sharing, stock option, life insurance or salary continuation plan which the Recipient either receives or is otherwise entitled to have paid on his or her behalf.

"Conditional Grant" means the conditional entitlement, evidenced by this Agreement to receive all or a portion of a Target Amount and Final Amount, subject to and in accordance with the provisions of this Agreement.

"Fair Market Value" means the closing price of the Stock as reported on The New York Stock Exchange, Inc. Composite Transactions Reporting System ("Composite Tape") for a particular date or, if the Stock is not so listed at any time, as reported on NASDAQ or on such other exchange or electronic trading system as, on the date in question, reports the largest number of traded shares of stock. If there are no Stock transactions on such date, the Fair Market Value shall be determined as of the immediately preceding date on which there were Stock transactions.

"Final Amount" means with regard to any Recipient, such number of shares of Restricted Stock Units ("RSUs") as specified in each Recipient' s Award Notice, times the applicable multiple factor determined under the Performance Measure at the end of the Performance Period.

"Involuntary Termination" means the termination of employment of the Recipient by the Company or its successor for any reason on or after a Change of Control; provided, that the termination does not result from an act of the Recipient that (i) constitutes common-law fraud, a felony, or a gross malfeasance of duty, or (ii) is materially detrimental to the best interests of the Company or its successor.

"Payout Amount" means the vested portion of the Final Amount expressed as shares of Stock underlying the RSUs.

"Peer Group" means the group of companies selected by the Committee for purposes of this Agreement as set forth in the Award Notice. Should consolidation among any Peer Group companies in the marketplace occur during the Performance Period, the Committee will determine the appropriate adjustments to accommodate the reduced number of Peer Group companies for the Performance Period. Should a Change of Control of the Company occur during the Performance Period, the Committee will determine the appropriate adjustments to measure Apache Corporation' s TSR for the Performance Period. The Peer Group companies for any particular Performance Period shall be determined at the commencement of such Performance Period.

"Performance Measure" means Apache Corporation' s TSR over the Performance Period compared to the TSR of the Company' s Peer Group over the Performance Period. At the end of the Performance Period, the Peer Group companies and the Company will be ranked together based on their TSR for the Performance Period from the highest TSR being number 1 to the lowest TSR being the number of Peer Group companies, including the Company, remaining in the group at the end of the Performance Period. Based on the Company' s relative TSR rank amongst the Peer Group companies for the Performance Period, a Recipient who remains employed as of the last day of the Performance Period will be issued RSUs at the close of the Performance Period as determined by the Company' s percentile rank as set forth in the Award Notice (the Final Amount).

"Performance Period" means the three-year period as specified in the Award Notice.

"Recipient" means an Eligible Person designated by the Committee at the Grant Date at the beginning of the Performance Period to receive one or more Conditional Grants under the Plan. For purposes of this Agreement, the group of Eligible Persons shall include all full-time and designated part-time employees of the Company who are employed as employees of the Company (as designated by the Company for payroll purposes) on the date immediately prior to the beginning of the Performance Period, but excluding Egyptian nationals employed outside of the United States, employees categorized by the Company (for payroll purposes) as non-exempt support and field staff, leased employees, interns, or, except for employees who are members of the Hierarchical Union Neuquén and the Union of Hierarchical Personnel of Private Oil and Gas for Neuquén, Rio Negro and La Pampa, any employee of the Company who is covered under a collective bargaining agreement, unless such collective bargaining agreement specifically provides for coverage under the Plan.

"Target Amount" means, with regard to any Recipient, such number of RSUs as specified in each Recipient' s Award Notice. Such Target Amount shall be based upon a target percentage of annual Base Salary determined immediately prior to the beginning of the Performance Period derived from job level.

"Total Shareholder Return" or "TSR" is determined by dividing (i) the sum of the cumulative amount of a company' s dividends for the Performance Period (assuming same-day reinvestment into the company' s common stock on the ex-dividend date) and the share price of the company at the end of the Performance Period minus the share price at the beginning of the Performance Period, by (ii) the share price at the beginning of the Performance Period.

"Voluntary Termination with Cause" occurs upon a Recipient' s separation from service of his own volition and one or more of the following conditions occurs without the Recipient' s consent on or after a Change of Control:

(a) There is a material diminution in the Recipient' s base compensation, compared to his rate of base compensation on the date of the Change of Control.

(b) There is a material diminution in the Recipient' s authority, duties or responsibilities.

(c) There is a material diminution in the authority, duties or responsibilities of the Recipient' s supervisor, such as a requirement that the Recipient (or his supervisor) report to a corporate officer or employee instead of reporting directly to the board of directors.

(d) There is a material diminution in the budget over which the Recipient retains authority.

(e) There is a material change in the geographic location at which the Recipient must perform his service, including, for example the assignment of the Recipient to a regular workplace that is more than 50 miles from his regular workplace on the date of the Change of Control.

The Recipient must notify the Company of the existence of one or more adverse conditions specified in clauses (a) through (e) above within 90 days of the initial existence of the adverse condition. The notice must be provided in writing to Apache Corporation' s Executive Vice President, Human Resources or his/her delegate. The notice may be provided by personal delivery or it may be sent by email, inter-office mail, regular mail (whether or not certified), fax, or any similar method. Apache Corporation' s Executive Vice President, Human Resources or his/her delegate shall acknowledge receipt of the notice within 5 business days; the acknowledgement shall be sent to the Recipient by certified mail. Notwithstanding the foregoing provisions of this definition, if the Company remedies the adverse condition within 30 days of being notified of the adverse condition, no Voluntary Termination with Cause shall occur.

Terms

1. Conditional Grant of RSUs. Subject to the provisions of this Agreement and the provisions of the Plan and Award Notice, the Company shall conditionally grant to the Recipient, pursuant to the Plan, a right to receive the Target Amount of RSUs set forth in the Recipient' s Award Notice. Such Target Amount shall be adjusted to a Final Amount at the end of the Performance Period based upon the results of the Performance Measure, as determined by the Committee. Notwithstanding the foregoing, the Target Amount shall be adjusted to a Final Amount of RSUs at the conclusion of the Performance Period solely for each Recipient who

remains employed as of the last day of the Performance Period. The award of the Final Amount shall give the Recipient the right, upon vesting, to an equal number of shares of $0.625 par value common stock of the Company (“Stock”).

2. Vesting and Payment of Stock. Subject to the provisions of Section 3, the Payout Amounts shall be payable in increments strictly in accordance with the following schedule:

(a) The entitlement to receive the number of shares of Stock pursuant to the RSUs comprising the Final Amount shall vest fifty percent (50%) on the final date of the Performance Period provided that the Recipient remains employed as an Eligible Person on such date. Such Stock, subject to applicable withholding, shall be transferred by the Company to the Recipient within thirty (30) days of the end of the Performance Period (subject to the Committee’ s confirmation) and not later than March 15 of the year following the year in which the RSUs vest.

(b) The entitlement to receive the remaining number of shares of Stock pursuant to the RSUs comprising the Final Amount shall vest and become transferable twenty-five percent (25%) twelve months from the close of the Performance Period and an additional twenty-five percent (25%) twenty-four months from the close of the Performance Period, provided that the Recipient remains employed as an Eligible Person on each such applicable vesting date. Such Stock, subject to applicable withholding, shall be transferred by the Company to the Recipient within thirty (30) days of the respective vesting date and not later than March 15 of the year following the year in which the RSUs vest.

3. Termination of Employment, Death, or Disability prior to the end of the Performance Period. Except as set forth below, a cessation of employment with the Company prior to the end of the Performance Period will result in the Target Amount being forfeited for all purposes.

(a) If the Recipient dies while employed by the Company, or on the date the Recipient becomes Disabled (defined for purposes of this Agreement as the Recipient’ s total and permanent disability as determined by the Company), during the Performance Period, the Recipient shall immediately receive an amount equal to the Target Amount of RSUs and shall become 100% vested in such Target Amount. Payment shall occur as soon as administratively convenient following the date the Recipient dies or becomes Disabled, but in no event shall the payment occur later than March 15 of the calendar year immediately following the calendar year in which the Recipient died or became Disabled. If the Recipient dies before receiving payment, the payment shall be made to the Recipient’ s estate.

4. Termination of Employment, Death or Disability on or after the end of the Performance Period. Except as set forth below, each Conditional Grant shall be subject to the condition that the Recipient has remained an Eligible Person from the Target award of the Conditional Grant of RSUs until the applicable vesting date as follows:

(a) If the Recipient voluntarily leaves the employment of the Company (including retirement), or if the employment of the Recipient is terminated by the Company for any reason or no reason, any Final Amounts not previously vested shall thereafter be void and forfeited for all purposes.

(b) A Recipient shall become 100% fully vested in all Final Amounts on the date the Recipient dies while employed by the Company, or on the date the Recipient becomes Disabled (defined for purposes of this Agreement as the Recipient' s total and permanent disability as determined by the Company) while employed by the Company. Payment shall occur as soon as administratively convenient following the date the Recipient dies or becomes Disabled, but in no event shall the payment occur later than March 15 of the calendar year immediately following the calendar year in which the Recipient died or became Disabled. If the Recipient dies before receiving payment, the payment shall be made to the Recipient' s estate.

5. Change of Control.

(a) In the event of the Recipient' s Involuntary Termination or Voluntary Termination with Cause which occurs (i) on or after a Change of Control of the Company and (ii) on or prior to the end of the Performance Period, the Recipient shall become 100% fully vested upon the occurrence of his Involuntary Termination or Voluntary Termination with Cause on or after the Change of Control in the number of RSUs determined by applying the multiple under the Performance Measure determined through the date of the Recipient' s Involuntary Termination or Voluntary Termination with Cause (based upon actual TSR results as of such date) to the Target Amount. Subject to Section 12.1(d) of the Plan, payment shall occur within thirty (30) days of the later of (1) the date of the Involuntary Termination or Voluntary Termination with Cause of the Recipient following the Change of Control or (2) the end of the Performance Period.

(b) In the event of a Recipient' s Involuntary Termination or Voluntary Termination with Cause occurring on or after a Change of Control of the Company which occurs after the end of the Performance Period, the Recipient shall become 100% fully vested in the Final Amount of RSUs as of the date of his Involuntary Termination or Voluntary Termination with Cause. Subject to Section 12.1(d) of the Plan, payment shall occur within thirty (30) days of the Change of Control.

6. Payment and Tax Withholding. Upon receipt of any entitlement to Stock under this Agreement, the Recipient shall make appropriate arrangements with the Company to provide for the amount of minimum tax withholding required by law, including without limitation Sections 3102 and 3402 or any successor section(s) of the Internal Revenue Code and applicable state and local income and other tax laws. Each payment of the Payout Amount shall be made in shares of Stock, determined by the Committee, such that the withheld number of shares shall be sufficient to cover the withholding amount required by this Section (including any amount to cover benefit tax charges arising thereon). The payment of a Payout Amount shall be based on the Fair Market Value of the shares of Stock on the applicable date of vesting to which such tax withholding relates. Where appropriate, shares shall be withheld by the Company to satisfy applicable tax withholding requirements rather than paid directly to the Recipient.

7. No Ownership Rights Prior to Issuance of Stock. Neither the Recipient nor any other person shall become the beneficial owner of the Stock underlying the Conditional Grant, nor have any rights of a shareholder (including, without limitation, dividend and voting rights) with respect to any such Stock, unless and until and after such Stock has been actually issued to the recipient and transferred on the books and records of the Company or its agent in accordance with the terms of the Plan and this Agreement.

8. Non-Transferability of Stock. Stock issued pursuant to a Conditional Grant shall not be transferable otherwise than by will or the laws of descent and distribution, subject to the conditions and exceptions set forth in Section 14.2 of the Plan.

9. No Right to Continued Employment. Neither the RSUs or Stock issued pursuant to a Conditional Grant nor any terms contained in this Agreement shall confer upon the Recipient any express or implied right to be retained in the employment or service of the Company for any period, nor restrict in any way the right of the Company, which right is hereby expressly reserved, to terminate the Recipient' s employment or service at any time for any reason or no reason. The Recipient acknowledges and agrees that any right to receive RSUs or Stock pursuant to a Conditional Grant is earned only by continuing as an employee of the Company at the will of the Company, or satisfaction of any other applicable terms and conditions contained in the Plan and this Agreement, and not through the act of being hired, being granted the Conditional Grant, or acquiring RSUs or Stock pursuant to the Conditional Grant hereunder.

10. The Plan. In consideration for this Conditional Grant, the Recipient agrees to comply with the terms of the Plan and this Agreement. This Agreement is subject to all the terms, provisions and conditions of the Plan, which are incorporated herein by reference, and to such regulations as may from time to time be adopted by the Committee. Unless defined herein, capitalized terms are used herein as defined in the Plan. In the event of any conflict between the provisions of the Plan and this Agreement, the provisions of the Plan shall control, and this Agreement shall be deemed to be modified accordingly. The Plan and the prospectus describing the Plan can be found on the Company' s HR intranet and the Plan document can be found on Fidelity' s website (netbenefits.fidelity.com). A paper copy of the Plan and the prospectus shall be provided to the recipient upon the Recipient' s written request to the Company at 2000 Post Oak Blvd., Suite 100, Houston, Texas 77056-4400, Attention: Corporate Secretary.

11. Compliance with Laws and Regulations.

(a) The Conditional Grant and any obligation of the Company to deliver RSUs or Stock hereunder shall be subject in all respects to (i) all applicable laws, rules and regulations and (ii) any registration, qualification, approvals or other requirements imposed by any government or regulatory agency or body which the Committee shall, in its discretion, determine to be necessary or applicable. Moreover, the Company shall not deliver any certificates for Stock to the Recipient or any other person pursuant to this Agreement if doing so would be contrary to applicable law. If at any time the Company determines, in its discretion, that the listing, registration or qualification of Stock upon any national securities exchange or under any applicable law, or the consent or approval of any governmental regulatory body, is necessary or desirable, the Company shall not be required to deliver any certificates for Stock to the Recipient or any other person pursuant to this Agreement unless and until such listing, registration, qualification, consent or approval has been effected or obtained, or otherwise provided for, free of any conditions not acceptable to the Company.

(b) It is intended that any Stock received in respect of the Conditional Grant shall have been registered under the Securities Act of 1933 ("Securities Act"). If the Recipient is an "affiliate" of the Company, as that term is defined in Rule 144 under the Securities Act ("Rule 144"), the Recipient may not sell the Stock received except in compliance with Rule 144.

Certificates representing Stock issued to an "affiliate" of the Company may bear a legend setting forth such restrictions on the disposition or transfer of the Stock as the Company deems appropriate to comply with Federal and state securities laws.

(c) If, at any time, the Stock is not registered under the Securities Act, and/or there is no current prospectus in effect under the Securities Act with respect to the Stock, the Recipient shall execute, prior to the delivery of any Stock to the Recipient by the Company pursuant to this Agreement, an agreement (in such form as the Company may specify) in which the Recipient represents and warrants that the Recipient is purchasing or acquiring the Stock acquired under this Agreement for the Recipient' s own account, for investment only and not with a view to the resale or distribution thereof, and represents and agrees that any subsequent offer for sale or distribution of any kind of such Stock shall be made only pursuant to either (i) a registration statement on an appropriate form under the Securities Act, which registration statement has become effective and is current with regard to the Stock being offered or sold, or (ii) a specific exemption from the registration requirements of the Securities Act, but in claiming such exemption the Recipient shall, prior to any offer for sale of such Stock, obtain a prior favorable written opinion, in form and substance satisfactory to the Company, from counsel for or approved by the Company, as to the applicability of such exemption thereto.

12. Notices. All notices by the Recipient or the Recipient' s assignees shall be addressed to the Administrative Agent, Fidelity, through the Recipient' s account at netbenefits.fidelity.com, or such other address as the Company may from time to time specify. All notices to the Recipient shall be addressed to the Recipient at the Recipient' s address in the Company' s records.

13. Other Plans. The Recipient acknowledges that any income derived from the Conditional Grant shall not affect the Recipient' s participation in, or benefits under, any other benefit plan or other contract or arrangement maintained by the Company or any Affiliate.

14. Terms of Employment. The Plan is a discretionary plan. The Recipient hereby acknowledges that neither the plan nor this Agreement forms part of his terms of employment and nothing in the Plan may be construed as imposing on the Company or any Affiliate a contractual obligation to offer participation in the Plan to any employee of the Company or any Affiliate. The Company or any Affiliate is under no obligation to grant further Stock to any Recipient under the Plan. The Recipient hereby acknowledges that if he ceases to be an employee of the Company or any Affiliate for any reason or no reason, he shall not be entitled by way of compensation for loss of office or otherwise howsoever to any sum.

15. Data Protection. By accepting this Agreement (whether by electronic means or otherwise), the Recipient hereby consents to the holding and processing of personal data provided by him to the Company for all purposes necessary for the operation of the Plan. These include, but are not limited to:

(a) administering and maintaining Recipient records;

(b) providing information to any registrars, brokers or third party administrators of the Plan; and

(c) providing information to future purchasers of the Company or the business in which the Recipient works.

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