
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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) December 23, 2009

HARBINGER GROUP INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

1-4219

(Commission File Number)

74-1339132

(IRS Employer Identification No.)

100 Meridian Centre, Suite 350, Rochester, New York

(Address of Principal Executive Offices)

14618

(Zip Code)

(585) 242-2000

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

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

TABLE OF CONTENTS

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

[Item 3.03 Material Modification to Rights of Security Holders.](#)

[Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers](#)

[Item 9.01 Financial Statements and Exhibits](#)

[SIGNATURES](#)

[EX-2.1](#)

[EX-3.1](#)

[EX-3.2](#)

[EX-10.1](#)

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1.01 Entry into Material Definitive Agreement.

Pursuant to the Agreement and Plan of Merger (“Merger Agreement”) dated as of November 4, 2009, by and between, Zapata Corporation, a Nevada corporation (“Zapata”), and Harbinger Group Inc., a Delaware corporation and wholly-owned subsidiary of Zapata (“Harbinger Group” or the “Surviving Corporation”), effective as of December 23, 2009, Zapata merged with and into Harbinger Group, with Harbinger Group being the surviving entity (the “Reincorporation Merger”).

The Reincorporation Merger was consummated to move our domicile from Nevada to Delaware, as described in Zapata’s Definitive Information Statement on Schedule 14C, filed with the Securities and Exchange Commission on November 30, 2009, which description is incorporated by reference herein (the “Information Statement”). As described in the Information Statement, the Merger Agreement and Reincorporation Merger were duly approved by the written consent of stockholders of Zapata owning at least a majority of the outstanding shares of Zapata’s common stock, par value \$0.01 per share (the “Zapata Common Stock”), dated November 3, 2009. A copy of the Merger Agreement is attached to this report as Exhibit 2.1 and is incorporated herein by reference.

Pursuant to the terms of the Merger Agreement,

- (i) our corporate name was changed from Zapata Corporation to Harbinger Group Inc.;
- (ii) our domicile changed from the State of Nevada to the State of Delaware;
- (iii) we are now governed by the laws of the State of Delaware and by Harbinger Group’s Certificate of Incorporation and Bylaws;
- (iv) stockholders have received one share of common stock, par value \$0.01 per share, of Harbinger Group (“Harbinger Group Common Stock”) for each share of Zapata Common Stock owned by the stockholders at the effective time of the merger;
- (v) Zapata’s existing executive officers and directors became the executive officers and directors of Harbinger Group; and
- (vi) Harbinger Group succeeded to the ownership of all of Zapata’s assets and has the rights, power and privileges and assumed all of Zapata’s obligations.

In connection with the Reincorporation Merger, the number of authorized shares of capital stock was increased to five hundred ten million (510,000,000) shares, of which five hundred million (500,000,000) shares are common stock, par value of \$.01 per share, and ten million (10,000,000) shares are preferred stock, par value of \$.01 per share.

A description of the provisions of the Certificate of incorporation and Bylaws of Harbinger Group is included in the Information Statement. Copies of the Certificate of incorporation and Bylaws of Harbinger Group are attached hereto as Exhibits 3.1 and Exhibit 3.2, respectively.

The Reincorporation Merger did not result in any change in headquarters, business, jobs, management, location of any offices or facilities, number of employees, assets, liabilities or net worth (other than as a result of the costs incident to the Reincorporation Merger, which are not material). Management, including all directors and officers, remain the same immediately after the Reincorporation Merger. There were no substantive changes in the employment agreements for executive officers or in other direct or indirect interests of the current directors or executive officers as a result of the Reincorporation Merger. Following the Reincorporation Merger, the common stock of the Surviving Corporation will be registered under Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) by virtue of Rule 12g-3 of the Exchange Act. The CUSIP number for the common stock of the Surviving Corporation is 41146A 106.

[Table of Contents](#)

At the effective time of the Reincorporation Merger, each outstanding share of Zapata Common Stock automatically was converted into one share of Harbinger Group Common Stock. Stockholders are not required to exchange their existing stock certificates, which now represent an equal number of shares of Harbinger Group Common Stock.

The common stock of the Surviving Corporation will trade on the New York Stock Exchange (“NYSE”) under the trading symbol HRG (instead of ZAP).

The foregoing description of the Merger Agreement is intended to be a summary and is qualified in its entirety by reference to such agreement, which is attached as Exhibit 2.1 and incorporated by reference as if fully set forth herein.

Item 3.03 Material Modification to Rights of Security Holders.

As a result of the Reincorporation Merger disclosed under Item 1.01 above, each outstanding share of Zapata Common Stock has been automatically converted into one share of Harbinger Group Common Stock. Each outstanding certificate representing Zapata Common Stock is now deemed, without any action by the stockholder, to represent the same number of shares of Harbinger Group Common Stock. Stockholders do not need to exchange their stock certificates as a result of the Reincorporation Merger.

In accordance with Rule 12g-3 under the Exchange Act, the common stock of the Surviving Corporation will be registered under Section 12(g) of the Exchange Act. The CUSIP number for the common stock of the Surviving Corporation is 41146A 106. The Surviving Corporation’s common stock will trade on the NYSE under the trading symbol HRG.

Prior to the effective time of the Reincorporation Merger, our corporate affairs were governed by the corporate laws of Nevada. The rights of our stockholders were subject to Zapata’s Articles of incorporation and its Bylaws. As a result of the Reincorporation Merger, holders of Zapata Common Stock are now holders of Harbinger Group Common Stock, and their rights as holders are governed by the General Corporation Law of Delaware and the Harbinger Group Certificate of Incorporation and Bylaws, which are filed as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Delaware corporate law will now be applicable in the determination of the rights of our stockholders. Please see the discussion entitled *Significant Changes Caused by the Reincorporation Merger* beginning on page 9 of the Information Statement for a summary of all of the material terms of the charter documents and laws of the two states as they pertain to stockholder rights.

The foregoing description of the Reincorporation Merger is intended to be a summary and is qualified in its entirety by reference to the information disclosed under Item 1.01 above and the exhibits filed herewith, all of which are incorporated herein by reference.

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

(b) Mr. Leonard DiSalvo resigned from his position of Chief Financial Officer of Harbinger Group as of December 24, 2009. Mr. DiSalvo will continue in his role as Vice President— Finance.

(c) On December 24, 2009, Harbinger Group’s Board of Directors (the “Board”) elected Francis T. McCarron, 52, as Executive Vice President and Chief Financial Officer of Harbinger Group, to hold office until his successor is chosen and qualified or until his earlier resignation or removal. From 2001 to 2007, Mr. McCarron was the Chief Financial Officer of Triarc Companies, Inc. (“Triarc”), which was renamed Wendy’s/Arby’s Group, Inc. in 2008. During the time of Mr. McCarron’s employment, Triarc, a public company traded on the New York Stock Exchange under the trading symbol TRY, was a holding company that, through its subsidiary Arby’s Restaurant Group, Inc., was the franchisor of the Arby’s restaurant system.

There are no family relationships between Mr. McCarron and any of Harbinger Group’s officers and directors. In addition, there are no transactions to which Harbinger Group or any of its subsidiaries is a party in which Mr. McCarron has a material interest subject to disclosure under Item 404(a) of Regulation S-15.

[Table of Contents](#)

Harbinger Group elected Mr. McCarron to serve as its Executive Vice President and Chief Financial Officer commencing on December 24, 2009 pursuant to an employment agreement entered as of December 24, 2009 (the "Employment Agreement"). Mr. McCarron's annual base salary is \$500,000 and, beginning January 1, 2010, he is eligible to earn an annual cash bonus targeted at three hundred percent (300%) of his base salary upon the attainment of certain reasonable performance objectives to be set by, and in the sole discretion of, our Board or the Compensation Committee of the Board, in consultation with Mr. McCarron. For 2010, his annual bonus is guaranteed to be a minimum of \$500,000.

Pursuant to the Employment Agreement, Mr. McCarron was granted an initial non-qualified option to purchase 125,000 shares of Harbinger Group's common stock (the "Initial Option") under Harbinger Group's Amended and Restated 1996 Long-Term Incentive Plan (the "Plan"). The Initial Option will vest in three substantially equal annual installments, subject to Mr. McCarron's continued employment on each annual vesting date, and granted at an exercise price equal to the fair market value of a share of common stock on the date of grant. For years beginning on or after January 1, 2011, Mr. McCarron will be eligible to receive an additional annual option or similar equity grant having a fair value targeted at between twenty-five percent (25%) and fifty percent (50%) of Mr. McCarron's total annual compensation for the immediately preceding year, subject to the sole discretion of our Board or the Compensation Committee of the Board (including the discretion of the Board, or the Compensation Committee of the Board, to grant awards higher than the targeted amount).

If Mr. McCarron's employment is terminated by Harbinger Group without cause, or by him for good reason, at any time on or prior to December 31, 2010, he will be entitled to the continuation of his base salary until December 31, 2010 and his Initial Option will become fully vested. In addition, he will be entitled to his annual bonus for 2010, in an amount equal to the greater of \$500,000 or the bonus earned for the year based upon the actual attainment of the performance goals, as pro-rated for the number of days Mr. McCarron was employed in 2010. If such a termination of employment occurs at any time after December 31, 2010, Mr. McCarron will be entitled to the continuation of his base salary for three months following such termination and full vesting of the Initial Option. He will also be entitled to his 2010 annual bonus to the extent not previously paid as of the date his employment terminates. Mr. McCarron will be subject to certain non-competition and non-solicitation restrictions for three months following the termination of his employment or, if longer, until December 31, 2010. If Mr. McCarron's employment is terminated after December 31, 2010, Harbinger Group may, in its discretion, reduce or eliminate the three-month restrictive period and make a corresponding reduction or elimination in Mr. McCarron's three month severance period.

The description of the Employment Agreement is qualified in its entirety by reference to the complete text of the document, a copy of which is attached hereto as Exhibit 10.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of November 4, 2009, by and between, Zapata Corporation, a Nevada corporation, and Harbinger Group Inc., a Delaware corporation and wholly-owned subsidiary of Zapata
3.1	Certificate of Incorporation of Harbinger Group Inc.
3.2	Bylaws of Harbinger Group Inc.
10.1	Employment Agreement, dated as of the 24th day of December, 2009, by and between Francis T. McCarron and Harbinger Group Inc., a Delaware corporation

[SIGNATURE PAGE FOLLOWS]

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.

HARBINGER GROUP INC.

Date: December 24, 2009

By: /s/ Leonard DiSalvo
Name: Leonard DiSalvo
Title: Vice President — Finance

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (“**Agreement**”), dated as of November 4, 2009, by and between Zapata Corporation, a Nevada corporation (“**Parent**”), and Harbinger Group Inc., a Delaware corporation (“**Subsidiary**”).

RECITALS:

Parent is a corporation organized and existing under the laws of Nevada.

Subsidiary is a corporation organized and existing under the laws of Delaware and is a wholly-owned subsidiary of Parent.

Parent and its board of directors deem it advisable and in the best interests of Parent and its stockholders to merge Parent with and into Subsidiary pursuant to the provisions of Nevada Revised Statutes (“**NRS**”) and the Delaware General Corporation Law (“**DGCL**”) upon the terms and conditions set forth in this Agreement, subject to the approval of the Parent’s stockholders as contemplated in Section 4.1.

NOW THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that Parent shall be merged with and into Subsidiary (the “**Merger**”) upon the terms and conditions set forth below.

ARTICLE 1

PRINCIPAL TERMS OF THE MERGER

SECTION 1.1 Merger. On the Effective Date (as defined in Section 4.1 below), Parent shall be merged with and into Subsidiary and the separate existence of Parent shall cease. Subsidiary shall be the surviving corporation (sometimes hereinafter referred to as the “**Surviving Corporation**”) in the Merger and shall operate under the name “Harbinger Group Inc.” by virtue of, and shall be governed by, the laws of Delaware. The address of the registered office of the Surviving Corporation in Delaware will be 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, and the registered agent in charge thereof shall be Corporation Service Company.

SECTION 1.2 Certificate of Incorporation of the Surviving Corporation. The certificate of incorporation of the Surviving Corporation shall be the certificate of incorporation of Subsidiary as in effect on the date hereof without change unless and until amended in accordance with applicable law.

SECTION 1.3 Bylaws of the Surviving Corporation. The bylaws of the Surviving Corporation shall be the bylaws of Subsidiary as in effect on the date hereof without change unless and until amended or repealed in accordance with applicable law.

SECTION 1.4 Directors and Officers. At the Effective Date of the Merger, the directors and officers of Parent in office at the Effective Date of the Merger shall become the directors and officers, respectively, of the Surviving Corporation, each of such directors and officers to hold office, subject to the applicable provisions of the certificate of incorporation and bylaws of the Surviving Corporation and the DGCL, until his or her successor is duly elected or appointed and qualified. The Surviving Corporation will have a classified board identical to that of the Parent, with the Surviving Corporation’s current board members remaining in their same classes, as set forth below:

Class I — Lap Wai Chan, Lawrence M. Clark, Jr. and Peter A. Jenson

Class II — Philip A. Falcone and Keith Hladek

Class III — Thomas Hudgins and Robert V. Leffler, Jr.

ARTICLE 2

CONVERSION, CERTIFICATES AND PLANS

SECTION 2.1 Conversion of Shares. At the Effective Date of the Merger, each of the following transactions shall be deemed to occur simultaneously:

(a) Common Stock. Each share of Parent's common stock, \$0.01 par value per share ("**Parent Stock**"), issued and outstanding immediately before the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and become one validly issued, fully paid and nonassessable share of the Surviving Corporation's common stock, \$0.01 par value per share ("**Surviving Corporation Stock**" or "**Subsidiary Stock**"), provided, that each share of Parent Stock held in Parent's treasury shall be canceled without any consideration being issued or paid therefor.

(b) Options. Each option to acquire shares of Parent Stock outstanding immediately before the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and become an equivalent option to acquire, upon the same terms and conditions, the number of shares of Surviving Corporation Stock that is equal to the number of shares of Parent Stock the optionee would have received had the optionee exercised such option in full immediately before the Effective Date (whether or not such option was then exercisable) and the exercise price per share under each such option shall be equal to the exercise price per share thereunder immediately before the Effective Date.

(c) Subsidiary Stock. Each share of Subsidiary Stock issued and outstanding immediately before the Effective Date and held by Parent shall be canceled without any consideration being issued or paid therefor.

SECTION 2.2 Stock Certificates. After the Effective Date, each certificate theretofore representing issued and outstanding shares of Parent Stock will thereafter be deemed to represent the same number of shares of the Surviving Corporation Stock. The holders of outstanding certificates theretofore representing Parent Stock will not be required to surrender such certificate to Parent or the Surviving Corporation.

SECTION 2.3 Reorganization. For United States federal income tax purposes, the Merger is intended to constitute a tax-free reorganization within the meaning of section 368(a) of the Internal Revenue Code of 1986, as amended. The parties to this Agreement hereby adopt this Agreement as a "plan of reorganization" within the meaning of sections 1.368-2(g) and 1.368-3(a) of the United States Treasury Regulations.

ARTICLE 3

TRANSFER AND CONVEYANCE OF ASSETS AND ASSUMPTION OF LIABILITIES

SECTION 3.1 Effects of the Merger. At the Effective Date, the Merger shall have the effects specified in the NRS, the DGCL and this Agreement. Without limiting the generality of the foregoing, and subject thereto, at the Effective Date the Surviving Corporation shall possess all the rights, privileges, powers and franchises, of a public as well as a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the parties to this Agreement; the rights, privileges, powers and franchises of Parent and Subsidiary, and all property, real, personal and mixed, and all debts due to each of them on whatever account, shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter the property of the Surviving Corporation, as they were of the respective constituent entities, and the title to any real estate, whether by deed or otherwise vested in Parent and Subsidiary or either of them, shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of the parties hereto shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent entities shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

SECTION 3.2 Additional Actions. If, at any time after the Effective Date of the Merger, the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or any other acts are necessary or desirable (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, title to and possession of any property or right of Parent acquired or to be acquired by reason of, or as a result of, the

Merger, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation may execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such property or rights in the Surviving Corporation and otherwise to carry out the purposes of this Agreement. The Surviving Corporation is fully authorized in the name of Parent or otherwise to take any and all such action pursuant to the irrevocable Power of Attorney granted by the Parent to the Subsidiary, attached hereto as Exhibit A.

ARTICLE 4

APPROVAL BY STOCKHOLDERS; AMENDMENT; EFFECTIVE DATE

SECTION 4.1 Approval. This Agreement and the Merger contemplated hereby are subject to approval by the requisite vote, or a written consent in lieu of vote, of the Parent's stockholders in accordance with the NRS and compliance with the requirements of law, including the securities laws of the United States. As promptly as practicable after the later of (a) approval of this Agreement by the Parent's stockholders in accordance with applicable law and (b) compliance with applicable securities laws, including, but not limited to, the filing of a Schedule 14C with the Securities and Exchange Commission and the mailing of a definitive Schedule 14C to the Parent's stockholders, duly authorized officers of the respective parties shall make and execute Articles of Merger and a Certificate of Ownership and Merger and shall cause such documents to be filed with the Secretary of State of Nevada and the Secretary of State of Delaware, respectively, in accordance with the laws of Nevada and Delaware and applicable U.S. federal securities laws. The effective date of the Merger ("**Effective Date**") shall be the date and time on and at which the Merger becomes effective under the laws of Nevada or the date and time on and at which the Merger becomes effective under the laws of Delaware, whichever occurs later. The execution and delivery hereof by the Parent shall constitute the approval and adoption of, and consent to, the Merger Agreement and the transactions contemplated thereby in Parent's capacity as the sole stockholder of the Subsidiary.

SECTION 4.2 Amendments. The Board of Directors of Parent may amend this Agreement at any time before the Effective Date, provided, however, that an amendment made subsequent to the approval of the Merger by the stockholders of Parent shall not (a) alter or change the amount or kind of shares to be received in exchange for or on conversion of all or any of the shares of Parent Stock, (b) alter or change any term of the certificate of incorporation of Subsidiary, except to cure any ambiguity, defect or inconsistency or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of Parent Stock.

ARTICLE 5

MISCELLANEOUS

SECTION 5.1 Termination. This Agreement may be terminated and the Merger abandoned at any time before the filing of this Agreement with the Secretary of State of Nevada and the Secretary of State of Delaware, whether before or after stockholder approval of this Agreement, by the consent of the Boards of Directors of Parent and Subsidiary.

SECTION 5.2 Captions and Section Headings. As used herein, captions and section headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

SECTION 5.3 Entire Agreement. This Agreement and the other documents delivered pursuant hereto and thereto, or incorporated by reference herein, contain the entire agreement between the parties hereto concerning the transactions contemplated herein and supersede all prior agreements or understandings between the parties hereto relating to the subject matter hereof.

SECTION 5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original instrument.

SECTION 5.5 Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall

not be affected thereby. To the extent permitted by applicable law, each party waives any provision of law which renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

SECTION 5.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

SECTION 5.7 No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 5.8 Governing Law. This Agreement shall be construed in accordance with the laws of Delaware, except to the extent the laws of Nevada shall apply to the Merger where mandated by the NRS.

IN WITNESS WHEREOF, Parent and Subsidiary have duly executed this Agreement as of the date first written above.

Parent:
Zapata Corporation
a Nevada corporation

By: /s/ Peter Jenson
Name: Peter Jenson
Title: Secretary

Subsidiary:
Harbinger Group Inc.
a Delaware corporation

By: /s/ Peter Jenson
Name: Peter Jenson
Title: Secretary

Exhibit A
Irrevocable Power of Attorney

Power of Attorney

(a) **CAUTION TO THE PRINCIPAL:** YOUR POWER OF ATTORNEY IS AN IMPORTANT DOCUMENT. AS THE "PRINCIPAL," YOU GIVE THE PERSON WHOM YOU CHOOSE (YOUR "AGENT") AUTHORITY TO SPEND YOUR MONEY AND SELL OR DISPOSE OF YOUR PROPERTY DURING YOUR LIFETIME WITHOUT TELLING YOU. YOU DO NOT LOSE YOUR AUTHORITY TO ACT EVEN THOUGH YOU HAVE GIVEN YOUR AGENT SIMILAR AUTHORITY.

WHEN YOUR AGENT EXERCISES THIS AUTHORITY, HE OR SHE MUST ACT ACCORDING TO ANY INSTRUCTIONS YOU HAVE PROVIDED OR, WHERE THERE ARE NO SPECIFIC INSTRUCTIONS, IN YOUR BEST INTEREST. "IMPORTANT INFORMATION FOR THE AGENT" AT THE END OF THIS DOCUMENT DESCRIBES YOUR AGENT'S RESPONSIBILITIES.

YOUR AGENT CAN ACT ON YOUR BEHALF ONLY AFTER SIGNING THE POWER OF ATTORNEY BEFORE A NOTARY PUBLIC.

YOU CAN REQUEST INFORMATION FROM YOUR AGENT AT ANY TIME. IF YOU ARE REVOKING A PRIOR POWER OF ATTORNEY BY EXECUTING THIS POWER OF ATTORNEY, YOU SHOULD PROVIDE WRITTEN NOTICE OF THE REVOCATION TO YOUR PRIOR AGENT(S) AND TO THE FINANCIAL INSTITUTIONS WHERE YOUR ACCOUNTS ARE LOCATED.

YOU CAN REVOKE OR TERMINATE YOUR POWER OF ATTORNEY AT ANY TIME FOR ANY REASON AS LONG AS YOU ARE OF SOUND MIND. IF YOU ARE NO LONGER OF SOUND MIND, A COURT CAN REMOVE AN AGENT FOR ACTING IMPROPERLY.

YOUR AGENT CANNOT MAKE HEALTH CARE DECISIONS FOR YOU. YOU MAY EXECUTE A "HEALTH CARE PROXY" TO DO THIS.

THE LAW GOVERNING POWERS OF ATTORNEY IS CONTAINED IN THE NEW YORK GENERAL OBLIGATIONS LAW, ARTICLE 5, TITLE 15. THIS LAW IS AVAILABLE AT A LAW LIBRARY, OR ONLINE THROUGH THE NEW YORK STATE SENATE OR ASSEMBLY WEBSITES, WWW.SENATE.STATE.NY.US OR WWW.ASSEMBLY.STATE.NY.US.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) **DESIGNATION OF AGENT(S):**

I, **Zapata Corporation**, 100 Meridian Centre, Suite 350, Rochester, NY 14618, hereby appoint:

Harbinger Group Inc., 100 Meridian Centre, Suite 350, Rochester, NY 14618, as my agent(s)

IF YOU DESIGNATE MORE THAN ONE AGENT ABOVE, THEY MUST ACT TOGETHER UNLESS YOU INITIAL THE STATEMENT BELOW.

() My agents may act SEPARATELY.

(c) **DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)**

If every agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

[name(s) and address(es) of successor agent(s)]

Successor agents designated above must act together unless you initial the statement below.

() My successor agents may act SEPARATELY.

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications".

(e) This POWER OF ATTORNEY REVOKES any and all prior Powers of Attorney executed by me unless I have stated otherwise below, under "Modifications".

IF YOU ARE NOT REVOKING YOUR PRIOR POWERS OF ATTORNEY, AND IF YOU ARE GRANTING THE SAME AUTHORITY IN TWO OR MORE POWERS OF ATTORNEY, YOU MUST ALSO INDICATE UNDER "MODIFICATIONS" WHETHER THE AGENTS GIVEN THESE POWERS ARE TO ACT TOGETHER OR SEPARATELY.

(f) **GRANT OF AUTHORITY:**

TO GRANT YOUR AGENT SOME OR ALL OF THE AUTHORITY BELOW, EITHER (1) INITIAL THE BRACKET AT EACH AUTHORITY YOU GRANT, OR (2) WRITE OR TYPE THE LETTERS FOR EACH AUTHORITY YOU GRANT ON THE BLANK LINE AT (P), AND INITIAL THE BRACKET AT (P). IF YOU INITIAL (P), YOU DO NOT NEED TO INITIAL THE OTHER LINES.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- () (A) real estate transactions;
- () (B) chattel and goods transactions;
- () (C) bond, share, and commodity transactions;
- () (D) banking transactions;
- () (E) business operating transactions;
- () (F) insurance transactions;
- () (G) estate transactions;
- () (H) claims and litigation;
- () (I) personal and family maintenance;
- () (J) benefits from governmental programs or civil or military service;
- () (K) health care billing and payment matters; records, reports, and statements;
- () (L) retirement benefit transactions;
- () (M) tax matters;
- () (N) all other matters;
- () (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
- () (P) EACH of the matters identified by the following letters

A,B,C,D,E,F,G,H,I,J,K,L,M,N,O

You need not initial the other lines if you initial line (P).

(g) *MODIFICATIONS: (OPTIONAL)*

IN THIS SECTION, YOU MAY MAKE ADDITIONAL PROVISIONS, INCLUDING LANGUAGE TO LIMIT OR SUPPLEMENT AUTHORITY GRANTED TO YOUR AGENT. HOWEVER, YOU CANNOT USE THIS MODIFICATIONS SECTION TO GRANT YOUR AGENT AUTHORITY TO MAKE MAJOR GIFTS OR CHANGES TO INTERESTS IN YOUR PROPERTY. IF YOU WISH TO GRANT YOUR AGENT SUCH AUTHORITY, YOU MUST COMPLETE THE STATUTORY MAJOR GIFTS RIDER.

1. Although this document revokes all powers of attorney I have previously executed, this document shall not revoke any powers of attorney previously executed by me for a specific or limited purpose, unless I have specified otherwise herein. It shall not revoke any power executed as part of a contract I signed or for the management of any bank or securities account. In order to revoke a prior power of attorney for a specific or limited purpose, I will execute a revocation specifically referring to the power to be revoked.

2. This power of attorney shall not be revoked by any subsequent power of attorney I may execute, unless such subsequent power specifically provides that it revokes this power by referring to the date of my execution of this document.

3. Whenever two or more powers of attorney are valid at the same time, the agents appointed on each shall act separately, unless specified differently in the documents.

(h) *MAJOR GIFTS AND OTHER TRANSFERS: STATUTORY MAJOR GIFTS RIDER (OPTIONAL)*

IN ORDER TO AUTHORIZE YOUR AGENT TO MAKE MAJOR GIFTS AND OTHER TRANSFERS OF YOUR PROPERTY, YOU MUST INITIAL THE STATEMENT BELOW AND EXECUTE A STATUTORY MAJOR GIFTS RIDER AT THE SAME TIME AS THIS INSTRUMENT. INITIALING THE STATEMENT BELOW BY ITSELF DOES NOT AUTHORIZE YOUR AGENT TO MAKE MAJOR GIFTS AND OTHER TRANSFERS. THE PREPARATION OF THE STATUTORY MAJOR GIFTS RIDER SHOULD BE SUPERVISED BY A LAWYER.

() (SMGR) I grant my agent authority to make major gifts and other transfers of my property, in accordance with the terms and conditions of the Statutory Major Gifts Rider that supplements this Power of Attorney.

(i) *DESIGNATION OF MONITOR(S): (OPTIONAL)*

I wish to designate ,

whose address(es) is (are) , as monitor(s).

Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the Power of Attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) *COMPENSATION OF AGENT(S): (OPTIONAL)*

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications".

() My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) *ACCEPTANCE BY THIRD PARTIES:* I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) *TERMINATION:* This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law.

Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) *SIGNATURE AND ACKNOWLEDGMENT:*

In Witness Whereof I have hereunto signed my name on **November 4th, 2009**.

PRINCIPAL signs here: = => /s/ Peter Jenson

Peter Jenson, Secretary of Zapata Corporation

STATE OF NEW YORK)

)
) ss.:

COUNTY OF **New York**)

On the **4th** day of **November** , in the year **2009**, before me, the undersigned, a Notary Public in and for said state, personally appeared **Peter Jenson**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

/s/ Lynn Toby Fisher

Notary Public

(n) *IMPORTANT INFORMATION FOR THE AGENT:*

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record or all receipts, payments, and transactions conducted for the principal; and

(5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or give major gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney or in a Statutory Major Gifts Rider attached to this Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

(o) *AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT*: It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we **Harbinger Group Inc.**, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

Agent(s) sign(s) here: => /s/ Peter Jenson

Peter Jenson, Secretary of Harbinger Group Inc.

STATE OF NEW YORK

)

) ss.:

COUNTY OF **New York**)

On the **4th** day of **November**, in the year **2009**, before me, the undersigned, a Notary Public in and for said state, personally appeared **Peter Jenson**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

/s/ Lynn Toby Fisher

Notary Public

2008 N.Y. Laws ch. 644, § 19, 5-1513; 2009 N.Y. Laws ch. 4 (amending effective date from March 1, 2009 to September 1, 2009).

**CERTIFICATE OF INCORPORATION
OF
HARBINGER GROUP INC.**

The undersigned, for purposes of incorporating a corporation under the General Corporation Law of the State of Delaware, does hereby certify as follows:

ARTICLE I — NAME

The name of the corporation is Harbinger Group Inc. (the "Corporation").

ARTICLE II — REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is Corporation Service Company.

ARTICLE III — PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV — CAPITALIZATION

(a) Authorized Shares. The total number of shares of stock which the Corporation shall have authority to issue is 510,000,000 shares consisting of 500,000,000 shares of common stock, par value \$.01 per share ("Common Stock") and 10,000,000 shares of preferred stock, par value \$.01 per share ("Preferred Stock").

(b) Preferred Stock. Shares of Preferred Stock may be issued in one or more series, from time to time, with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the board of directors of the Corporation (the "Board of Directors"), and the Board of Directors is hereby expressly vested with authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

- (i) The number of shares constituting that series and the distinctive designation of that series;
- (ii) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- (iii) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
- (iv) Whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (v) Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

- (vi) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;
- (vii) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and
- (viii) Any other relative rights, preferences and limitations of that series.

ARTICLE V — BOARD OF DIRECTORS

(a) Number of Directors and Newly Created Directorships.

(i) Subject to any special rights of the holders of any class or series of stock to elect directors, the number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by the Board of Directors in the manner provided in this Certificate of Incorporation and the Bylaws of the Corporation (the “Bylaws”).

(ii) If the number of directors is changed, any increase or decrease shall be apportioned by resolution of the Board of Directors among the classes so as to maintain a number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. To the extent reasonably possible, consistent with the foregoing, any newly created directorships shall be added to those classes whose terms of office are to expire at the latest dates following such allocation and newly eliminated directorships shall be subtracted from those classes whose terms of office are to expire at the earliest dates following such allocation, unless otherwise provided for from time to time by resolution adopted by a majority of the members of the Incumbent Board (as defined below) then in office, although less than a quorum. The “Incumbent Board” shall mean those directors listed in Article VI(b) of this Certificate of Incorporation, provided that (A) any person becoming a director subsequent to such date whose election, or nomination for election by the Corporation’s stockholders, is approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Corporation, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended) or (B) any person appointed by the Incumbent Board to fill a vacancy, shall also be considered a member of the Incumbent Board.

(b) Classified Board of Directors. Subject to any special right of the holders of any class or series of stock to elect directors, the Board of Directors shall be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible. The initial Class III directors shall serve for a term expiring at the first annual meeting of stockholders of the Corporation following the filing of this Certificate of Incorporation; the initial Class I directors shall serve for a term expiring at the second annual meeting of stockholders following the filing of this Certificate of Incorporation; and the initial Class II directors shall serve for a term expiring at the third annual meeting of stockholders following the filing of this Certificate of Incorporation. Each director in each class shall hold office until his or her successor is duly elected and qualified, subject, however, to prior death, resignation, retirement or removal from office. At each annual meeting of stockholders beginning with the first annual meeting of stockholders following the filing of this Certificate of Incorporation, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election, with each director in each such class to hold office until his or her successor is duly elected and qualified.

(c) Removal of Directors.

(i) Subject to any special rights of the holders of any class or series of stock to elect directors, neither the Board of Directors nor any individual director may be removed without cause.

(ii) Subject to any limitation imposed by law and any special rights of the holders of any class or series of stock to elect directors, any director may be removed with cause by the holders of a majority of the voting power of the Corporation entitled to vote at an election of directors.

(d) Vacancies. Subject to the rights of the holders of any series or class of stock to elect directors, any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall be filled by the vote of a majority of the members of the Incumbent Board then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Subject to any special rights of the holders of any series or class of stock to elect directors and except as otherwise provided by law, in the event of a vacancy in the Board of Directors, the remaining directors may exercise the powers of the full Board of Directors until the vacancy is filled. Any director elected in accordance with this section shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

ARTICLE VI — INCORPORATOR; INITIAL BOARD OF DIRECTORS

(a) Incorporator. The name and mailing address of the incorporator of the Corporation is Tracy A. Romano, c/o Kaye Scholer LLP, 425 Park Avenue, New York, NY 10022.

(b) Initial Board of Directors. The powers of the incorporator shall terminate upon the filing of this Certificate of Incorporation. The names and mailing addresses of the persons who are to serve as the initial Board of Directors shall be as follows:

<u>Name and Class</u>	<u>Address</u>
Lap Wai Chan — Class I	171 E. 64th Street New York, NY 10065
Lawrence M. Clark, Jr. — Class I	c/o Harbinger Capital Partners, LLC, 450 Park Avenue, 30th Floor, New York, NY, 10022
Peter A. Jenson — Class I	c/o Harbinger Capital Partners, LLC, 450 Park Avenue, 30th Floor, New York, NY, 10022
Philip A. Falcone — Class II	c/o Harbinger Capital Partners, LLC, 450 Park Avenue, 30th Floor, New York, NY, 10022
Keith Hladek — Class II	c/o Harbinger Capital Partners, LLC, 450 Park Avenue, 30th Floor, New York, NY, 10022
Robert V. Leffler, Jr. — Class III	2607 N. Charles Street Baltimore, MD 21218
Thomas Hudgins— Class III	4700 North Ocean Blvd. Myrtle Beach, SC 29577

ARTICLE VII — LIMITATION OF DIRECTOR LIABILITY; INDEMNIFICATION AND
ADVANCEMENT OF EXPENSES

(a) Limitation of Director Liability. The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the DGCL, including, without limitation, paragraph (7) of subsection (b) of Section 102 thereof, as the same may be amended or supplemented. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

(b) Indemnification. The Corporation shall have the power, to the fullest extent permitted by Section 145 of the DGCL, as the same may be amended or supplemented, to indemnify any person by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those

indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

(c) Effect of Amendment. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this Article VII, whether by amendment to this Certificate of Incorporation or by merger, reorganization, recapitalization or other corporate transaction having the effect of amending this Certificate of Incorporation, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VIII — MEETINGS OF STOCKHOLDERS

- (a) Annual Meetings of Stockholders. The annual meeting of stockholders shall be held in accordance with the procedures set forth in the Bylaws.
- (b) Special Meetings of Stockholders. Special Meetings of Stockholders may be called in accordance with the procedures set forth in the Bylaws.

ARTICLE IX — BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

- (a) The Corporation elects not to be governed by Section 203 of the DGCL.
- (b) Notwithstanding any other provision(s) of this Article IX, the Corporation shall not engage in any Business Combination (as defined below) with any Interested Stockholder (as defined below) for a period of three years following the time that such stockholder became an Interested Stockholder, unless:
 - (i) Prior to such time the Board of Directors approved either the Business Combination or the transaction which resulted in the stockholder becoming an Interested Stockholder;
 - (ii) Upon consummation of the transaction which resulted in the stockholder becoming an Interested Stockholder, the Interested Stockholder owned at least 85% of the Voting Stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the Voting Stock outstanding (but not the outstanding Voting Stock owned by the Interested Stockholder) those shares owned (A) by persons who are directors and also officers and (B) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
 - (iii) At or subsequent to such time the Business Combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least a majority of the outstanding Voting Stock which is not owned by the Interested Stockholder.
- (c) The restrictions contained in Article IX shall not apply if:
 - (i) The Corporation does not have a class of Voting Stock that is: (A) listed on a national securities exchange; or (B) held of record by more than 2,000 stockholders, unless any of the foregoing results from action taken, directly or indirectly, by an Interested Stockholder or from a transaction in which an individual, corporation, partnership, unincorporated association or other entity (a "Person") becomes an Interested Stockholder;
 - (ii) A stockholder becomes an Interested Stockholder inadvertently and (A) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an Interested Stockholder; and (B) would not, at any time within the three-year period immediately prior to a Business Combination between the Corporation and such stockholder, have been an Interested Stockholder but for the inadvertent acquisition of ownership;

(iii) The Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which,

(A) Constitutes one of the transactions described in the second sentence of this paragraph;

(B) Is with or by a Person who either was not an Interested Stockholder during the previous three years or who became an Interested Stockholder with the approval of the Board of Directors or during the period described in paragraph (iv) of this subsection (c); and

(C) Is approved or not opposed by a majority of the members of the Board of Directors then in office (but not less than one) who were directors prior to any Person becoming an Interested Stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors.

The proposed transactions referred to in the preceding sentence are limited to

(1) A merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required);

(2) A sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to 50% or more of either the aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock (as defined below) of the Corporation; or

(3) A proposed tender or exchange offer for 50% or more of the outstanding Voting Stock of the Corporation.

The Corporation shall give not less than 20 days' notice to all Interested Stockholders prior to the consummation of any of the transactions described in clause (1) or (3) of this paragraph; or

(iv) The Business Combination is with an Interested Stockholder who became an Interested Stockholder at a time when the restrictions contained in this section did not apply by reason of paragraph (i) of this subsection (c).

(d) As used in this Article IX only, the term:

(i) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, Controls (as defined below), or is controlled by, or is under common control with, another Person.

(ii) "Associate," when used to indicate a relationship with any Person, means: (A) Any other Person of which such Person is a director, officer or partner or is, directly or indirectly, the Owner (as defined below) of 20% or more of any class of Voting Stock; (B) Any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (C) Any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.

(iii) "Business Combination," when used in reference to any corporation and any Interested Stockholder of such corporation, means:

(A) Any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation with the Interested Stockholder, or with any Person if the merger or consolidation is caused by the Interested Stockholder and as a result of such merger or consolidation Article IX(b) is not applicable to the surviving Person;

(B) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of such corporation, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market

value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock of the Corporation;

(C) Any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any Stock of the Corporation or of such subsidiary to the Interested Stockholder, except: (1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of such corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Stockholder became such; (2) pursuant to a merger under Section 251(g) of the DGCL; (3) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of such corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of Stock of such corporation subsequent to the time the Interested Stockholder became such; (4) pursuant to an exchange offer by the Corporation to purchase Stock made on the same terms to all holders of said Stock; or (5) any issuance or transfer of Stock by the Corporation; *provided, however*, that in no case under items (3)-(5) of this subparagraph shall there be an increase in the Interested Stockholder's proportionate share of the Stock of any class or series of the Corporation or of the Voting Stock of the Corporation;

(D) Any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the Stock of any class or series, or securities convertible into the Stock of any class or series, of the Corporation or of any such subsidiary which is owned by the Interested Stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of Stock not caused, directly or indirectly, by the Interested Stockholder; or

(E) Any receipt by the Interested Stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of such corporation), of any loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in subparagraphs (A)-(D) of this section) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iv) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract or otherwise. A Person who is the Owner of 20% or more of the outstanding Voting Stock of any other Person shall be presumed to have control of such Person, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such Person holds Voting Stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such Person.

(v) "Interested Stockholder" means any Person (other than the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) that is the Owner of 15% or more of the outstanding Voting Stock of the Corporation, or is an Affiliate or Associate of the Corporation and was the Owner of 15% or more of the outstanding Voting Stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person, *provided, however*, that the term "Interested Stockholder" shall not include;

(A) any Person whose ownership of shares in excess of the 15% limitation set forth herein is the result of action taken solely by the Corporation; *provided that* such Person shall be an Interested Stockholder if thereafter such Person acquires additional shares of Voting Stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such Person. For the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock of the Corporation deemed to be outstanding shall include Stock deemed to be owned by the Person through application of paragraph (ix) of this subsection but shall not include any other unissued Stock of such

Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise; and

(B) any Person that would have been deemed to be an Interested Stockholder of Zapata Corporation, a Nevada corporation (“Zapata Nevada”), immediately prior to the consummation of the merger contemplated by the Agreement and Plan of Merger between Zapata Nevada and the Corporation if the terms and conditions of this Article IX had been included in the articles of incorporation of Zapata Nevada. For avoidance of doubt, the following Persons and their Affiliates are not Interested Stockholders: any Person, investment fund, managed account or special purpose entity which is directly or indirectly controlled or managed by, or is under common control with, or controls, Harbinger Holdings, LLC and/or each of its affiliates and/or subsidiaries, or any successor thereto, or is otherwise controlled or managed, directly or indirectly, by Philip A. Falcone.

(vi) “Stock” means, with respect to any corporation, capital stock and, with respect to any other Person, any equity interest.

(vii) “Voting Stock” means, with respect to any corporation, Stock of any class or series entitled to vote generally in the election of directors and, with respect to any Person that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such Person. Every reference to a percentage of voting stock shall refer to such percentage of the votes of such voting stock.

(viii) “Owner,” including the terms “own” and “owned,” when used with respect to any Stock, means a Person that individually or with or through any of its Affiliates or Associates:

(A) Beneficially owns such Stock, directly or indirectly; or

(B) Has (i) the right to acquire such Stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Owner of Stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person’s Affiliates or Associates until such tendered Stock is accepted for purchase or exchange; or (ii) the right to vote such Stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Owner of any Stock because of such Person’s right to vote such Stock if the agreement, arrangement or understanding to vote such Stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more Persons; or

(C) Has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subparagraph (B) of this paragraph), or disposing of such Stock with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, such Stock.

ARTICLE X — CORPORATE OPPORTUNITIES

(a) Certain Acknowledgements. In recognition and anticipation that (i) a director of the Corporation (each, an “Overlap Person”) may now serve and may in the future serve as a director, officer, partner, manager, representative, agent or employee of one or more Other Entities (as defined below), (ii) an Overlap Person may be presented with opportunities whether in his or her capacity as a director, officer, partner, manager, representative, agent or employee of the Corporation, one or more Other Entities or otherwise, (iii) the Corporation, directly or indirectly, may engage in the same, similar or related lines of business as those engaged in by an Other Entity, (iv) from time to time, the Corporation or its subsidiaries may be interested, or potentially interested, in the same or similar business opportunities as an Other Entity, (v) the Corporation will derive substantial benefits from the service of the Overlap Persons as directors of the Corporation and its subsidiaries, and (vi) it is in the best interests of the Corporation that the rights of the Corporation, and the duties of any Overlap Person, be determined and delineated as provided in this Article X in respect of any Potential Business Opportunities (as defined below) and in respect of the agreements and transactions referred to herein. The provisions of this Article X will, to the

fullest extent permitted by law, regulate and define the conduct of the business and affairs of the Corporation and its directors who are Overlap Persons in connection with any Potential Business Opportunities. Any Person purchasing or otherwise acquiring any shares of capital stock of the Corporation, or any interest therein, will be deemed to have notice of and to have consented to the provisions of this Article X.

(b) As used in this Article X, the term or terms:

(i) “directors,” “officers,” “employees” and “agents” of any Person will be deemed to include those Persons who hold similar positions or exercise similar powers and authority with respect to any Other Entity that is a non-corporate Person.

(ii) “Disqualified Opportunity” means a Potential Business Opportunity that meets any of the following criteria: (A) the acquisition of an equity interest in a Person that does not entitle the Corporation to elect a majority of the members of the board of directors, general partner, managing member or similar governing body of such Person, (B) the extension of credit to any Person, or the acquisition of any interest or participation in any debt, (C) the acquisition of debt, equity or other interests in a Person or business that is reasonably believed by an Other Entity or an Overlap Person to be distressed or insolvent or to be in default with respect to any debt, (D) the extension of credit to, or the acquisition of debt or equity or other interests or assets in, a Person or business that is in a bankruptcy or insolvency proceeding, including, but not limited to, providing debtor-in-possession financing or the purchase of interests in a Person, assets or business in connection with a bankruptcy or insolvency proceeding or reorganization or liquidation relating to or arising from a bankruptcy or insolvency proceeding, (E) an acquisition of assets that does not constitute a whole company, operating division of a Person or line of business, or (F) investments in any other industry in which the Corporation is not then engaged and that the Board of Directors designates from time to time as being a Disqualified Opportunity.

(iii) “Other Entity” means any Person (other than the Corporation and any Person that is controlled by the Corporation) for which an Overlap Person serves as a director, officer, partner, member, manager, representative, agent, adviser, fiduciary or employee, including, but not limited to, any Person, investment fund, managed account or special purpose entity which is directly or indirectly controlled or managed by, or is under common control with, or controls, Harbinger Holdings, LLC and/or each of its affiliates and/or subsidiaries, or any successor thereto, or is otherwise controlled or managed, directly or indirectly, by Philip A. Falcone.

(iv) “Potential Business Opportunity” means a potential transaction or matter (and any such actual or potential business opportunity) that may constitute or present a business opportunity for the Corporation or any of its subsidiaries, in which the Corporation or any of its subsidiaries could, but for the provisions of this Article X, have an interest or expectancy.

(v) “Restricted Potential Business Opportunity” means a Potential Business Opportunity that satisfies all of the following conditions: (A) such Potential Business Opportunity was expressly presented or offered to the Overlap Person solely in his or her capacity as a director or officer of the Corporation; (B) the Corporation possessed, or would reasonably be expected to be able to possess, the resources, including cash, necessary to exploit such Potential Business Opportunity; (C) such Potential Business Opportunity relates exclusively to the business of the Corporation as the business of the Corporation at such time is determined by the Board of Directors from time to time in good faith; and (D) such Potential Business Opportunity does not constitute a Disqualified Opportunity.

(c) Duties of Directors Regarding Potential Business Opportunities; Renunciation of Interest in Potential Business Opportunities. If a director of the Corporation who is an Overlap Person is presented or offered, or otherwise acquires knowledge of, a Potential Business Opportunity: (i) such Overlap Person will, to the fullest extent permitted by law, have no duty or obligation to refrain from referring such Potential Business Opportunity to any Other Entity and, if such Overlap Person refers such Potential Business Opportunity to an Other Entity, such Overlap Person shall have no duty or obligation to refer such Potential Business Opportunity to the Corporation or to any of its subsidiaries or to give any notice to the Corporation or to any of its subsidiaries regarding such Potential Business Opportunity (or any matter related thereto); (ii) any Other Entity may participate, engage or invest in any such Potential Business Opportunity notwithstanding that such Potential Business Opportunity may have been referred to such Other Entity by an Overlap Person; and (iii) if a director who is an Overlap Person refers a Potential

Business Opportunity to an Other Entity then, as between the Corporation and such Other Entity, the Corporation shall not have any interest, expectancy or right in or to such Potential Business Opportunity or to receive any income or proceeds derived therefrom solely as a result of such Overlap Person having been presented or offered, or otherwise acquiring knowledge of such Potential Business Opportunity. The Corporation hereby renounces, to the fullest extent permitted by law, any interest or expectancy in any Potential Business Opportunity that is a Disqualified Opportunity or that is not a Restricted Potential Business Opportunity. In the event the Board of Directors declines to pursue a Restricted Potential Business Opportunity, any Overlap Person shall be free to refer such Restricted Potential Business Opportunity to an Other Entity.

(d) Certain Agreements and Transactions Permitted. No contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof) entered into between the Corporation and/or any of its subsidiaries, on the one hand, and any Other Entity, on the other hand, shall be void or voidable or be considered unfair to the Corporation or any of its subsidiaries because an Other Entity is a party thereto, or because any directors, officers, partners, managers, representative, agents or employees of an Other Entity were present at or participated in any meeting of the Board of Directors, or a committee thereof, of the Corporation, or the Board of Directors, or committee thereof, of any subsidiary of the Corporation, that authorized the contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof), or because his, her or their votes were counted for such purpose. The Corporation may, from time to time, enter into and perform, and cause or permit any of its subsidiaries to enter into and perform, one or more contracts, agreements, arrangements or transactions (or amendments, modifications or supplements thereto) with an Other Entity. To the fullest extent permitted by law, no such contract, agreement, arrangement or transaction (nor any such amendments, modifications or supplements), nor the performance thereof by the Corporation, an Other Entity or any subsidiary thereof, shall be considered contrary to any fiduciary duty owed to the Corporation (or to any subsidiary of the Corporation, or to any stockholder of the Corporation or any of its subsidiaries) by any director or officer of the Corporation (or by any director or officer of any subsidiary of the Corporation) who is an Overlap Person. To the fullest extent permitted by law, no director or officer of the Corporation or any subsidiary of the Corporation who is an Overlap Person thereof shall have or be under any fiduciary duty to the Corporation (or to any subsidiary of the Corporation, or to any stockholder of the Corporation or any of its subsidiaries) to refrain from acting on behalf of the Corporation or an Other Entity, or any of their respective subsidiaries, in respect of any such contract, agreement, arrangement or transaction or performing any such contract, agreement, arrangement or transaction in accordance with its terms and shall be deemed (i) not to have breached his or her duties of loyalty to the Corporation or to any of its subsidiaries or to any stockholder of the Corporation or any of its subsidiaries, and (ii) not to have derived an improper personal benefit therefrom.

(e) Amendment of Article X. No alteration, amendment or repeal, or adoption of any provision inconsistent with, any provision of this Article X, whether by amendment to this Certificate of Incorporation or by merger, reorganization, recapitalization or other corporate transaction having the effect of amending this Certificate of Incorporation, will have any effect upon: (i) any agreement between the Corporation or a subsidiary thereof and any Other Entity thereof, that was entered into before the time of such alteration, amendment or repeal or adoption of any such inconsistent provision (the "Amendment Time"), or any transaction entered into in connection with the performance of any such agreement, whether such transaction is entered into before or after the Amendment Time; (ii) any transaction entered into between the Corporation or a subsidiary thereof and any Other Entity, before the Amendment Time; (iii) the allocation of any business opportunity between the Corporation or any subsidiary thereof and any Other Entity before the Amendment Time; or (iv) any duty or obligation owed by any director of the Corporation or any subsidiary of the Corporation (or the absence of any such duty or obligation) with respect to any Potential Business Opportunity which such director was offered, or of which such director or officer otherwise became aware, before the Amendment Time (regardless of whether any proceeding relating to any of the above is commenced before or after the Amendment Time).

ARTICLE XI — AMENDMENTS TO THE CERTIFICATE OF INCORPORATION AND BYLAWS

(a) Amendments to the Certificate of Incorporation. Notwithstanding any other provisions of this Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted, from time to time, by applicable law, no provision of this Certificate of Incorporation may be altered, amended or repealed in any respect, nor may

any provision inconsistent therewith be adopted, unless such alteration, amendment, repeal or adoption is approved by the affirmative vote of the holders of at least fifty percent (50%) of the capital stock of the Corporation entitled to vote generally in an election of directors, voting together as a single class.

(b) Adoption, Amendment and Repeal of the Bylaws. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to make, alter, amend and repeal the Bylaws of the Corporation subject to the power of the stockholders of the Corporation to alter, amend or repeal the Bylaws; *provided, however*, that with respect to the powers of stockholders to make, alter, amend or repeal the By-laws, the affirmative vote of the holders of majority of the Corporation's outstanding voting stock shall be required to make, alter amend or repeal the Bylaws of the Corporation.

(c) Amendments to Article IX.

(i) Any amendments to Article IX, whether by amendment to this Certificate of Incorporation or by merger, reorganization, recapitalization or other corporate transaction having the effect of amending this Certificate of Incorporation, shall not be effective until 12 months after the adoption of such amendment and shall not apply to any Business Combination, as defined in Article IX, between the Corporation and any Person who became an Interested Stockholder, as defined in Article IX, of the Corporation on or prior to such adoption; and

(ii) Any amendments to Article IX, whether by amendment to this Certificate of Incorporation or by merger, reorganization, recapitalization or other corporate transaction having the effect of amending this Certificate of Incorporation, shall not apply to restrict a Business Combination between the Corporation and an Interested Stockholder of the Corporation if the Interested Stockholder became such prior to the effective date of the amendment.

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Incorporation this 3rd day of November, 2009.

/s/ Tracy Romano
Incorporator

**BYLAWS
OF
HARBINGER GROUP INC.
(A DELAWARE CORPORATION)**

Article I.

Meetings of Stockholders

SECTION 1.01 *Annual Meetings*. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Only such business as is properly designated by resolution of the Board of Directors or otherwise brought before such meeting in accordance with the Corporation's Certificate of Incorporation ("Certificate of Incorporation") and these Bylaws may be transacted at the annual meeting.

SECTION 1.02 *Special Meetings*. Special meetings of stockholders for any purpose or purposes may be called at any time by either (a) the Chairman of the Board of Directors or (b) by the Secretary or other officer of the Corporation upon delivery of a written request executed by three directors or, if there are fewer than three directors in office at that time, by all incumbent directors, which request shall specify the purpose of and business to be conducted at such special meeting. Special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

SECTION 1.03 *Notice of Meetings*. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. The attendance of any stockholder at a meeting, whether in person or by proxy, without protesting at the beginning of the meeting that the meeting is not lawfully called or convened, shall constitute a waiver of notice by such stockholder.

SECTION 1.04 *Adjournments*. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

SECTION 1.05 *Quorum*. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the person presiding over such meeting or stockholders present acting by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 1.04 of these Bylaws until a quorum shall attend. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes;

provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

SECTION 1.06 Organization. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by the Chief Executive Officer or, in his or her absence, by the President or, in his or her absence, by a Vice President or, in the absence of the foregoing persons, by a chairman designated by the Board of Directors or, in the absence of such designation, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence, or at the request of the Secretary or the person presiding over the meeting, any other person may be selected to act as secretary of the meeting.

SECTION 1.07 Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation which are present in person or by proxy and entitled to vote thereon.

SECTION 1.08 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than 60 days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 1.09 List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day

before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (b) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.09 or to vote in person or by proxy at any meeting of stockholders.

SECTION 1.10 Action by Written Consent of Stockholders. To the fullest extent and in the manner permitted by law, any action required or permitted to be taken at a meeting of the stockholders or of a class or series of stockholders may be taken without a meeting of the stockholders or of such class or series of stockholders upon the consent in writing signed by such stockholders who would have been entitled to vote the minimum number of votes that would be necessary to authorize the action at a meeting at which all the stockholders entitled to vote thereon were present and voting. The consents shall be filed with the Secretary.

SECTION 1.11 Inspectors of Election. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

SECTION 1.12 Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a

matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 1.13 Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only:

- (i) pursuant to the Corporation's notice of meeting (or any supplement thereto);
- (ii) by or at the direction of the Board of Directors or any committee thereof; or

(iii) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in Section 1.13(c)(i) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.13(c)(i).

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or any committee thereof or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice required by Section 1.13(c)(i) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice requirements set forth in Section 1.13(c)(i).

(c) Stockholder's Notice. For any nominations or other business to be properly brought before an annual meeting or special meeting by a stockholder pursuant Section 1.13(a)(iii) or Section 1.13(b)(ii), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action.

(i) Timing of Stockholder's Notice.

(A) For a stockholder's notice with respect to an annual meeting to be timely, it must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting (*provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). Notwithstanding anything in the previous sentence to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased effective at the annual meeting and there is no public announcement by the Corporation naming the nominees for the additional directorships at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.13 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) For a stockholder's notice with respect to a special meeting of stockholders called by the Corporation for the purpose of electing one or more directors to the Board of Directors to be timely, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such

position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 1.13(b)(ii) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(C) In no event shall the public announcement of an adjournment or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(ii) *Content of Stockholder's Notice.* The stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election as a director (y) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder, and (z) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (2) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (3) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (4) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (5) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (6) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (7) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

(iii) *Other Information.* The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation, including, but not limited to, requiring proposed nominees to respond to a questionnaire providing information about the candidate's background and qualifications, to represent that he or she has no agreements with

any third party as to voting or compensation in connection with his or her service as a director, and to agree to abide by applicable confidentiality, governance, conflicts, stock ownership and trading policies of the Corporation. The foregoing notice requirements of this Section 1.13(c) shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(d) General.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.13 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.13. Except as otherwise provided by law, the person presiding over the meeting shall have the power and duty:

(A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (6) of Section 1.13(c)(ii)(C) hereof); and

(B) if any proposed nomination or business was not made or proposed in compliance with this Section 1.13, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(ii) For purposes of this Section 1.13, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(iii) Notwithstanding the foregoing provisions of this Section 1.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.13; *provided however*, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.13 (including Section 1.13(a)(iii) and Section 1.13(b) hereof), and compliance with Section 1.13(a)(iii) and Section 1.13(b) shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the last sentence of Section 1.13(c)(iii), matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 1.13 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Article II.

Board of Directors

SECTION 2.01 Number; Qualifications. Subject to the Certificate of Incorporation, the Board of Directors shall initially consist of seven members and the size of the Board of Directors may be decreased or increased, from time to time, by resolution of the Board of Directors. Directors need not be stockholders.

SECTION 2.02 Election; Resignation; Vacancies. Each director shall be elected in the manner specified in the Certificate of Incorporation and these Bylaws and shall hold office until such time as is set forth therein and herein. Any director may resign at any time upon notice to the Corporation. Unless otherwise provided by law or the Certificate of Incorporation, any newly created directorship or any vacancy occurring in the Board of Directors for any reason may be filled only by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

SECTION 2.03 Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

SECTION 2.04 Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, Chief Executive Officer, or by the Secretary upon written request of any three members of the Board of Directors or, if there are fewer than three directors in office at that time, by all incumbent directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting orally or in writing, by telephone, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting.

SECTION 2.05 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.05 shall constitute presence in person at such meeting.

SECTION 2.06 Quorum; Vote Required for Action. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum or, if there are fewer directors then in office than the number of directors required to constitute such a quorum, a majority of the members of the Board of Directors then in office shall constitute a quorum. Except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 2.07 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by a chairman chosen at the meeting. The Secretary or other person chosen by the Secretary shall act as secretary of the meeting, but in his or her absence, the chairman of the meeting may appoint any person to act as secretary of the meeting.

SECTION 2.08 Action by Unanimous Consent of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee in accordance with applicable law.

SECTION 2.09 Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Article III.

Committees

SECTION 3.01 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SECTION 3.02 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

Article IV.

Officers

SECTION 4.01 Officers. The officers of the Corporation may consist of a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice Presidents, a Secretary, a Treasurer, a Controller and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal.

SECTION 4.02 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which he or she is a party. Any officer may resign at any time upon written notice to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy until the earlier of such officer's resignation, removal, death or until a successor shall have been duly chosen and qualified.

SECTION 4.03 Chairman of the Board of Directors. The Board of Directors may, by resolution adopted by a majority of the Board of Directors, at any time designate one of its members as Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside at the meetings of the Board, shall be responsible for the orderly conduct by the Board of Directors of its oversight of the business and affairs of the Corporation and its other duties as provided by law, the Certificate of Incorporation and these Bylaws and shall have such other authority and responsibility as the Board of Directors may designate. A Chairman of the Board shall be considered an officer of the Corporation unless designated as a non-executive Chairman of the Board by a resolution of the Board of Directors.

SECTION 4.04 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors or, if directed by the Board of Directors, to the Chairman of the Board of Directors. Unless otherwise provided in these Bylaws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders and of the Board of Directors.

SECTION 4.05 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Chief Executive Officer or the Board of Directors may from time to time determine.

SECTION 4.06 President. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall have the power to affix the signature of the Corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Chief Executive Officer or the Board of Directors may from time to time determine.

SECTION 4.07 Vice Presidents. Each Vice President shall have all such powers and duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President.

SECTION 4.08 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may from time to time determine.

SECTION 4.09 Controller. The Controller shall be the chief accounting officer of the Corporation. The Controller shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may from time to time determine.

SECTION 4.10 Secretary. The powers and duties of the Secretary are: (a) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (b) to see that all notices required to be given by the Corporation are duly given and served; (c) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (d) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (e) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Chief Executive Officer or the Board of Directors may from time to time determine.

SECTION 4.11 Additional Matters. The Board of Directors, the Chief Executive Officer and the President of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

SECTION 4.12 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

SECTION 4.13 Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors, Chairman of the Board, President or Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer.

Article V.

Stock

SECTION 5.01 Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

SECTION 5.02 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 5.03 Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

Article VI.

Indemnification and Advancement of Expenses

SECTION 6.01 Indemnification and Advancement of Expenses. Each person who is or was a director of the Corporation shall be indemnified and advanced expenses by the Corporation to the fullest extent permitted from time to time by the General Corporation Law of the State of Delaware as it exists on the date hereof or as it may hereafter be amended (but, if permitted by applicable law, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) or any other applicable laws as presently or hereafter in effect. The Corporation may, by action of the Board of Directors, provide indemnification and advance expenses to officers, employees and agents (other than directors) of the Corporation, to directors, officers, employees or agents of a subsidiary, and to each person serving as a director, officer, partner, member, employee or agent of another Corporation, partnership, limited liability company, joint venture, trust or other enterprise, at the request of the Corporation (each of the foregoing, a "Covered Person"), with the same scope and effect as the foregoing indemnification of directors of the Corporation. The Corporation shall be required to indemnify any person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors or is a proceeding to enforce such person's claim to indemnification pursuant to the rights granted by these Bylaws or otherwise by the Corporation. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification or advancement of expenses greater or different than that provided in this Article VI.

SECTION 6.02 Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

SECTION 6.03 Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

Article VII.

Miscellaneous

SECTION 7.01 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7.02 Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

SECTION 7.03 Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 7.03, shall be deemed to have consented to receiving such single written notice. Notice to directors need not be in writing and may be given by telecopier, telephone, electronic mail or other means of electronic transmission.

SECTION 7.04 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

SECTION 7.05 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

SECTION 7.06 Amendment of Bylaws. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the Board of Directors or by the affirmative vote of the holders of at least a majority of the Corporation's outstanding voting stock, subject to and only in accordance with the provisions of the Certificate of Incorporation.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "**Agreement**") is made and entered into as of the 24th day of December, 2009, by and between Francis T. McCarron (the "**Executive**") and Harbinger Group Inc., a Delaware corporation ("**Harbinger Group**" or the "**Employer**"). Unless the context otherwise requires, references to the Employer shall include its successors and assigns, direct and indirect subsidiaries, affiliates and parents.

RECITALS

- A. The Employer desires that the Executive provide services for the benefit of the Employer and its affiliates and the Executive desires to accept such employment with the Employer.
- B. The Employer and the Executive acknowledge that the Executive will be a member of the senior management team of the Employer and, as such, will participate in implementing the Employer's business plan.
- C. In the course of employment with the Employer, the Executive will have access to certain confidential information that relates to or will relate to the business of the Employer and its affiliates.
- D. The Employer desires that any such information not be disclosed to other parties or otherwise used for unauthorized purposes.

NOW, THEREFORE, in consideration of the above premises and the following mutual covenants and conditions, the parties agree as follows:

1. **Employment.** Harbinger Group shall employ the Executive as its Executive Vice President and Chief Financial Officer ("**EVP-CFO**"), and the Executive hereby accepts such employment on the following terms and conditions. In the event that the Executive ceases to be employed by the Employer for any reason, the Executive shall tender his resignation from all positions he holds with the Employer, effective on the date his employment is terminated.

2. **Duties.** The Executive shall work for the Employer in a full-time capacity. The Executive shall, during the term of this Agreement, have the duties, responsibilities, powers, and authority customarily associated with the position of EVP-CFO. The Executive shall report to, and follow the direction of, Harbinger Group's Chief Executive Officer ("**CEO**"). In addition to the foregoing, the Executive also shall perform such services and duties as may be reasonably assigned to him from time to time by Harbinger Group's Board of Directors (the "**Board**"). The Executive agrees to cooperate with reasonable requests of the Employer to provide services to its affiliates (each, an "**Affiliate**"), with approval from the Board, from time to time. The Executive shall devote substantially all of his business time, energy, attention, and skill to the performance of duties for the Employer or its Affiliates, and will use his best, reasonable efforts to promote the interests of the Employer. It shall not be considered a violation of the foregoing for the Executive to serve on industry, civic, religious or charitable boards or committees, or to manage

his personal investments, so long as such services and activities do not individually or in the aggregate significantly interfere with the performance of the Executive's responsibilities as an employee of the Employer in accordance with this Agreement.

3. **Executive Loyalty.** The Employer shall be entitled to all benefits and profits arising from or incident to any and all work, services, and advice of the Executive. The Executive expressly agrees that during the period of this Agreement, he shall not engage, directly or indirectly, as a partner, officer, director, member, manager, stockholder, advisor, agent, employee, or in any other form or capacity, in any other business similar to the then current business of the Employer. The foregoing notwithstanding, and except as otherwise set forth in Paragraph 9, nothing herein contained shall be deemed to prevent the Executive from investing his money in the capital stock or other securities of any corporation whose stock or securities are publicly-owned or are regularly traded on any public exchange, nor shall anything herein contained be deemed to prevent the Executive from investing his money in real estate, or to otherwise manage his personal investments and financial affairs.

4. **Period of Employment.** The Executive understands and agrees that he is an at-will employee at all times and the Executive and the Employer can, and shall have the right to, terminate the employment relationship at any time for any or no reason, with or without notice, and with or without Cause (as hereinafter defined), subject to this Agreement. Nothing contained in this Agreement or any other agreement shall alter the at-will relationship. Notwithstanding the foregoing, the parties agree that on or prior to December 31, 2010 they shall, if mutually agreed, renegotiate the terms of the Executive's employment. If (i) the Employer elects not to renegotiate the terms of the Executive's employment or (ii) in connection with such renegotiation, the parties are unable to reach mutually acceptable terms after negotiating in good faith, the Executive will be entitled to the severance payments described in Paragraph 8 hereof as if his employment was terminated by the Company without Cause.

5. **Compensation.**

A. The Employer shall pay the Executive an annualized base salary of \$500,000 (the "**Base Salary**"), payable in substantially equal installments in accordance with the Employer's payroll policy applicable to senior executives from time to time in effect, which payments shall be made not less frequently than monthly. The Executive's salary shall be subject to any payroll or other deductions as may be required to be made pursuant to law, government order, or by agreement with, or consent of, the Executive. The Base Salary shall be reviewed no less frequently than annually for increase in the discretion of the Company. If the Executive is requested to perform significant services for an Affiliate, the Executive shall be entitled to receive additional reasonable compensation at a level commensurate with the services performed for such Affiliate.

B. The Executive shall be eligible to earn an annual cash bonus (the "**Annual Bonus**") targeted at three hundred percent (300%) of his Base Salary upon the attainment of certain reasonable performance objectives to be set by, and in the sole discretion of, the Board or the Compensation Committee of the Board, in consultation with the Executive. Notwithstanding the foregoing, the Executive's Annual Bonus for the year ended December 31, 2010, only, shall

be a minimum of \$500,000. The parties agree that the performance targets for the 2010 Annual Bonus shall be determined no later than ninety (90) days following the Executive's employment start date. Except as otherwise provided herein, the Executive must be actively employed by the Employer on the date the Annual Bonus is paid to receive a bonus for a given year. Annual Bonus compensation earned and payable pursuant hereto shall be paid in the calendar year following the fiscal year for which the bonus is earned, and promptly following the completion of the audit of the Employer's annual financial statements, and in no event shall such payment be made later than April 15 of such following calendar year.

C. The Executive shall be entitled to receive stock options pursuant and subject to the terms of the Employer's Amended and Restated 1996 Long-Term Incentive Plan (the "**Plan**"). The Employee shall receive, on his first day of employment and subject to the approval of the Board, an initial option grant (the "**Initial Option**") to purchase 125,000 shares of the Employer's common stock, par value \$.01 per share. The Initial Option shall have an exercise price equal to the closing price of the Employer's common stock as listed on the New York Stock Exchange on the date of grant. The Initial Option shall vest in three (3) substantially equal annual installments, with such vesting to occur on the first, second and third anniversaries of the date of grant, so long as the Executive continues to be employed by the Employer on each such date. The foregoing notwithstanding, upon a termination of the Executive's employment by the Employer without Cause (including pursuant to the last sentence of Paragraph 4 hereof), or by the Executive for Good Reason (as hereinafter defined), the Initial Option shall become one hundred percent (100%) vested as of the date of such termination. The definitive terms of the Initial Option shall be set forth in a stock option agreement in the Employer's standard form (the "**Stock Option Agreement**"), which shall describe the foregoing and the other terms and conditions of the Initial Option. For years beginning on or after January 1, 2011, the Executive shall be eligible to receive an additional annual option or similar equity grant having a fair value (using market standard valuation methodologies) targeted at between twenty-five percent (25%) and fifty percent (50%) of the Executive's total annual compensation earned, accrued or received for the immediately preceding year, subject to the sole discretion of the Board or the Compensation Committee of the Board (including the discretion of the Board, or the Compensation Committee of the Board, to grant awards higher than the targeted amount). Such additional option or equity grant shall vest in three (3) substantially equal annual installments, with such vesting to occur on the first, second and third anniversaries of the date of grant, so long as the Executive continues to be employed by the Employer on each such date. Subject to applicable securities law, the Employer shall register a sufficient number of shares of common stock of the Employer on a Form S-8 to satisfy its obligations under the Plan.

D. During the period of this Agreement, the Employer shall:

(1) include the Executive in any life insurance, disability insurance, medical, dental or health insurance, savings, pension and retirement plans and other benefit plans or programs maintained by the Employer for the benefit of its senior executive employees, subject to the terms of such plans and programs; and

(2) provide the Executive with twenty (20) days paid vacation per annum, which shall accrue pro-rata during the course of such year.

6. Expenses. The Employer shall reimburse the Executive for all reasonable and approved business expenses in accordance with its expense reimbursement policy, provided the Executive submits paid receipts or other documentation acceptable to the Employer and as required by the Internal Revenue Service to qualify as ordinary and necessary business expenses under the Internal Revenue Code of 1986, as amended (the "Code"). The payment or reimbursement of any expense pursuant to this Paragraph 6 in one of the Executive's taxable years shall not affect the amount of the payment or reimbursement of any other expenses pursuant to such paragraph in any other taxable years. Any payment or reimbursement for expenses under this Paragraph 6 shall in any event be made on or before the last day of the Executive's taxable year following the taxable year in which the expense was incurred. Any right to payment or reimbursement under this Paragraph 6 may not be liquidated or exchanged for any other benefit.

7. Termination. Notwithstanding anything in Paragraph 4 of this Agreement to the contrary, the Executive's services shall terminate upon the first to occur of the following events:

A. Upon the Executive's date of death or the date the Executive is given written notice that he has been determined to be disabled by the Employer. For purposes of this Agreement, the Executive shall be deemed to be disabled if the Executive, as a result of illness or incapacity, shall be unable to perform substantially his required duties for a period of four (4) consecutive months or for any aggregate period of six (6) months in any twelve (12) month period. A termination of the Executive's employment by the Employer for disability shall be communicated to the Executive by written notice and shall be effective on the tenth (10th) business day after receipt of such notice by the Executive, unless the Executive returns to full-time performance of his duties before such tenth (10th) business day.

B. On the date the Employer provides the Executive with written notice that he is being terminated for "Cause." For purposes of this Agreement, the Executive shall be deemed terminated for Cause if the Employer terminates the Executive's employment in writing after the Executive:

- (1) shall have been convicted, indicted for, or entered a plea of nolo contendere to, any felony or any other act involving fraud, theft, misappropriation, dishonesty, or embezzlement;
- (2) shall have committed intentional and willful acts of misconduct that materially impair the goodwill or business of the Employer or its Affiliates or cause material damage to its or their property, goodwill, or business; or
- (3) shall have willfully refused to, or willfully failed to, perform in any material respect his duties hereunder, provided, however, that no such termination for Cause under this subparagraph 7B(3) shall be effective unless the Executive does not cure such refusal or failure to the Employer's reasonable satisfaction as soon as practicable after the Employer gives the Executive written notice

identifying such refusal or failure (and, in any event, within ten (10) calendar days after receipt of such written notice).

For purposes of determining Cause, no act or failure to act by the Executive shall be considered "willful" unless it is done or omitted to be done by the Executive in bad faith and without reasonable belief that his action or omission was in the best interests of the Employer or its Affiliates. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or the written instructions of the CEO, or based upon the written advice of counsel for the Employer, shall be presumed to be done by the Executive in good faith and in the best interests of the Employer. Any voluntary termination by the Executive in anticipation of a termination for Cause under this subparagraph B shall be deemed a termination for Cause.

C. On the date the Executive terminates his employment for any reason, other than a reason set forth in Paragraph 7E, provided that the Executive shall give the Employer thirty (30) days written notice prior to such date of his intention to terminate such employment.

D. On the date the Employer terminates the Executive's employment for any reason (including pursuant to the last sentence of Paragraph 4 hereof), other than a reason otherwise set forth in this Paragraph 7, provided that the Employer shall give the Executive thirty (30) days written notice prior to such date of its intention to terminate such employment.

E. On the date the Executive provides written notice terminating his employment with Good Reason, which termination shall have occurred no later than 4 months following the date the Executive learns of the event constituting Good Reason. For purposes of this Agreement, "Good Reason" shall mean the occurrence of any of the following events without either (x) the Executive's express prior written consent or (y) full cure within 30 days after the Executive gives written notice to the Employer requesting cure, such notice to be given by the Executive no later than 60 days after the date he first learns that the event has occurred: (i) any material diminution in the Executive's title, responsibilities or authorities, (ii) the assignment to him of duties that are materially inconsistent with his duties as the principal financial officer of Harbinger Group; (iii) any change in the reporting structure so that he reports to any person or entity other than CEO and/or the Board; (iv) the relocation of the Executive's principal office, or principal place of employment, to a location that is outside the borough of Manhattan, New York; (v) a breach by the Employer or any of its Affiliates of any material terms of this Agreement; or (vi) any failure of the Employer to obtain the assumption (in writing or by operation of law) of its obligations under this Agreement by any successor to all or substantially all of its business or assets upon consummation of any merger, consolidation, sale, liquidation, dissolution or similar transaction.

8. Compensation Upon Termination.

A. If the Executive's services are terminated pursuant to Paragraph 7, the Executive shall be entitled to his salary through his final date of active employment plus any accrued but unused vacation pay. The Executive also shall be entitled to any benefits mandated under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or required under the terms of any death, insurance, or retirement plan, program, or agreement provided by

the Employer and to which the Executive is a party or in which the Executive is a participant, including, but not limited to, any short-term or long-term disability plan or program, if applicable.

B. In addition to the salary and benefits set forth in Paragraph 8A, if the Executive's services are terminated pursuant to Paragraph 7D or 7E at anytime on or prior to December 31, 2010, the Executive shall be entitled to: (i) the continuation of his Base Salary until December 31, 2010, payable in substantially equal installments in accordance with the Employer's payroll policy from time to time in effect; (ii) the guaranteed Annual Bonus for the year ending December 31, 2010, or, if greater, the Annual Bonus the Executive would have earned based on the performance goals actually achieved during the 2010 calendar year multiplied by a fraction, the numerator of which shall equal the number of days the Executive was employed by the Employer during 2010 and the denominator of which shall equal three hundred sixty five (365), to be paid at the time otherwise set forth above in Paragraph 5B; and (iii) full and immediate vesting of the Initial Option. In addition to the salary and benefits set forth in Paragraph 8A, if the Executive's services are terminated pursuant to Paragraph 7D or 7E at anytime after December 31, 2010, the Executive shall be entitled to (1) the continuation of his Base Salary for a period of three (3) months following such termination, (2) the amount payable pursuant to clause (ii) of this Paragraph 8B, if not already paid and (3) full and immediate vesting of the Initial Option. The Executive's entitlement to the payments set forth in this Paragraph 8B shall be conditioned upon his execution of an agreement acceptable to the Employer that (x) waives any rights the Executive may otherwise have against the Employer, (y) releases the Employer from actions, suits, claims, proceedings and demands related to the period of employment and/or the termination of employment, and (z) contains certain other obligations which shall be set forth at the time of the termination; provided, however, that any such waiver and release shall not include a waiver or release of the Executive's rights (I) arising under, or preserved by, this Agreement, (II) to continued coverage under the Employer's Directors & Officers insurance policies, (III) to indemnification pursuant to the Indemnification Agreement (as defined in Paragraph 9N below), or (IV) as a shareholder of the Employer. The Executive must sign and tender the release as described above not later than sixty (60) days following the Executive's last day of employment, and if the Executive fails or refuses to do so, the Executive shall forfeit the right to such termination compensation as would otherwise be due and payable.

C. The Employer and the Executive intend that the payments and benefits provided for in this Agreement either be exempt from Section 409A of the Code, or be provided for in a manner that complies with Section 409A of the Code, and any ambiguity herein shall be interpreted so as to be consistent with the intent of this subparagraph (C). In no event whatsoever shall the Employer be liable for any additional tax, interest or penalty that may be imposed on the Executive by Code Section 409A or damages for failing to comply with Section 409A. Notwithstanding anything contained herein to the contrary, all payments and benefits under this Paragraph 8 shall be paid or provided only at the time of a termination of Executive's employment that constitutes a "separation from service" from the Employer within the meaning of Section 409A of the Code and the regulations and guidance promulgated thereunder (determined after applying the presumptions set forth in Treas. Reg. Section 1.409A-1(h)(1)). Further, if the Executive is a "specified employee" as such term is defined under Section 409A

of the Code and the regulations and guidance promulgated thereunder, any payments described in Paragraph 8B shall be delayed for a period of six (6) months following the Executive's separation of employment to the extent and up to an amount necessary to ensure such payments are not subject to the penalties and interest under Section 409A of the Code.

9. Protective Covenants. The Executive acknowledges and agrees that solely by virtue of his employment by, and relationship with, the Employer, he has acquired and will acquire "Confidential Information", as hereinafter defined, as well as special knowledge of the Employer's relationships with its customers and suppliers, and that, but for his association with the Employer, the Executive would not or will not have had access to said Confidential Information or knowledge of said relationships. The Executive further acknowledges and agrees (i) that the Employer has long term, near-permanent relationships with its customers and suppliers, and that those relationships were developed at great expense and difficulty to the Employer over several years of close and continuing involvement; (ii) that the Employer's relationships with its customers and suppliers are and will continue to be valuable, special and unique assets of the Employer and that the identity of its customers and suppliers is kept under tight security with the Employer and cannot be readily ascertained from publicly available materials or from materials available to the Employer's competitors; and (iii) that the Employer has certain protectable interests that are critical to its competitive advantage in the industry and would be of demonstrable value in the hands of a competitor. In return for the consideration described in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as a condition precedent to the Employer entering into this Agreement, and as an inducement to the Employer to do so, the Executive hereby represents, warrants, and covenants as follows:

A. The Executive has executed and delivered this Agreement as his free and voluntary act, after having determined that the provisions contained herein are of a material benefit to him, and that the duties and obligations imposed on him hereunder are fair and reasonable and will not prevent him from earning a comparable livelihood following the termination of his employment with the Employer.

B. The Executive has read and fully understands the terms and conditions set forth herein, has had time to reflect on and consider the benefits and consequences of entering into this Agreement, and has had the opportunity to review the terms hereof with an attorney or other representative, if he so chooses.

C. The execution and delivery of this Agreement by the Executive does not conflict with, or result in a breach of or constitute a default under, any agreement or contract, whether oral or written, to which the Executive is a party or by which the Executive may be bound. In addition, the Executive has informed the Employer of, and provided the Employer with copies of, any non-competition, confidentiality, work-for-hire or similar agreements to which the Executive is subject or may be bound.

D. The Executive agrees that, during the period of his employment with the Employer and, except as set forth below in this subparagraph D, for a period of three (3) months after the termination of the Executive's employment hereunder (or, if longer, until December 31,

2010) (the "**Restricted Period**") for any reason whatsoever or for no reason, whether voluntary or involuntary, the Executive will not, except on behalf of the Employer, anywhere in the United States of America or in any other place or venue where the Employer or any affiliate, subsidiary, or division thereof now conducts or operates, or may conduct or operate, its business prior to the date of the Executive's termination of employment:

(1) directly or indirectly, contact, solicit or accept if offered to the Executive, or direct any person, firm, corporation, association or other entity to contact, solicit or accept if offered to it, any of the Employer's customers, prospective customers, or suppliers (as hereinafter defined) for the purpose of providing any products and/or services that are the same as or similar to the products and services provided by the Employer to its customers during the term hereof; or

(2) solicit or accept if offered to him, with or without solicitation, on his own behalf or on behalf of any other person, the services of any person who is a then current employee of the Employer (or was an employee of the Employer during the year preceding such solicitation), nor solicit any of the Employer's then current employees (or an individual who was employed by or engaged by the Employer during the year preceding such solicitation) to terminate employment or an engagement with the Employer, nor agree to hire any then current employee (or an individual who was an employee of the Employer during the year preceding such hire) of the Employer into employment with himself or any company, individual or other entity; or

(3) directly or indirectly, whether as an investor (excluding investments representing less than one percent (1%) of the common stock of a public company), lender, owner, stockholder, officer, director, consultant, employee, agent, salesperson or in any other capacity, whether part-time or full-time, become associated with any business involved in the design, manufacture, marketing, or servicing of products then constituting ten percent (10%) or more of the annual revenues of the Employer; or

(4) act as a consultant, advisor, officer, manager, agent, director, partner, independent contractor, owner, or employee for or on behalf of any of the Employer's customers, prospective customers, or suppliers (as hereinafter defined), with respect to or in any way with regard to any aspect of the Employer's business and/or any other business activities in which the Employer engages during the term hereof.

The foregoing notwithstanding, in the event of a termination of employment pursuant to Paragraph 7D or 7E after December 31, 2010, the Restricted Period may, in the Employer's discretion, be shortened or eliminated and a corresponding reduction or elimination shall be made to the period of time over which the Employer is otherwise obligated to continue the Executive's Base Salary pursuant to Paragraph 8B. In the event of any breach of this subparagraph D, the

Executive agrees that the applicable Restricted Period shall be tolled during the time of such breach.

E. The Executive acknowledges and agrees that the scope described above is necessary and reasonable in order to protect the Employer in the conduct of its business and that, if the Executive becomes employed by another employer, he shall be required to disclose the existence of this Paragraph 9 to such employer and the Executive hereby consents to and the Employer is hereby given permission to disclose the existence of this Paragraph 9 to such employer.

F. For purposes of this Paragraph 9, "customer" shall be defined as any person, firm, corporation, association, or entity that purchased any type of product and/or service from the Employer or is or was doing business with the Employer or the Executive within the twelve (12) month period immediately preceding termination of the Executive's employment. For purposes of this Paragraph 9, "prospective customer" shall be defined as any person, firm, corporation, association, or entity contacted or solicited by the Employer or the Executive (whether directly or indirectly) or who contacted the Employer or the Executive (whether directly or indirectly) within the twelve (12) month period immediately preceding termination of the Executive's employment for the purpose of having such persons, firms, corporations, associations, or entities become a customer of the Employer. For purposes of this Paragraph 9, "supplier" shall be defined as any person, firm, corporation, association, or entity who is or was doing business with the Employer or the Executive or who was contacted or solicited by the Employer or the Executive (whether directly or indirectly) or who contacted or solicited the Employer or the Executive (whether directly or indirectly) within the twelve (12) month period immediately preceding termination of the Executive's employment.

G. The Executive agrees that during his employment (other than to the extent reasonably necessary to perform his services under this Agreement) and thereafter the Executive will not, for any reason whatsoever, use for himself or disclose to any person not employed by the Employer any "Confidential Information" of the Employer acquired by the Executive during his relationship with the Employer, both prior to and during the period of this Agreement. The Executive further agrees to use Confidential Information solely for the purpose of performing duties with, or for, the Employer and further agrees not to use Confidential Information for his own private use or commercial purposes or in any way detrimental to the Employer. The Executive agrees that "Confidential Information" includes but is not limited to: (1) any financial, engineering, business, planning, operations, services, potential services, products, potential products, technical information and/or know-how, organization charts, formulas, business plans, production, purchasing, marketing, pricing, sales, profit, personnel, customer, broker, supplier, or other lists or information of the Employer; (2) any papers, data, records, processes, methods, techniques, systems, models, samples, devices, equipment, compilations, invoices, customer lists, or documents of the Employer; (3) any confidential information or trade secrets of any third party provided to the Employer in confidence or subject to other use or disclosure restrictions or limitations; and (4) any other information, written, oral, or electronic, whether existing now or at some time in the future, whether pertaining to current or future developments, and whether previously accessed during the Executive's tenure with the Employer or to be accessed during his future employment with the Employer, which pertains to the

Employer's affairs or interests or with whom or how the Employer does business. The Employer acknowledges and agrees that Confidential Information does not include (i) information properly in the public domain, or (ii) information in the Executive's possession prior to the date of his original employment with the Employer, except to the extent that such information is or has become a trade secret of the Employer or is or otherwise has become the property of the Employer.

H. During and after the period of employment hereunder, the Executive will not remove from the Employer's premises any documents, records, files, notebooks, correspondence, reports, video or audio recordings, computer printouts, computer programs, computer software, price lists, microfilm, drawings or other similar documents containing Confidential Information, including copies thereof, whether prepared by him or others, except as his duty shall require, and in such cases, will promptly return such items to the Employer. Upon termination of his employment with the Employer, all such items including summaries or copies thereof, then in the Executive's possession, shall be returned to the Employer immediately.

I. The Executive recognizes and agrees that all ideas, inventions, patents, copyrights, copyright designs, trade secrets, trademarks, processes, discoveries, enhancements, software, source code, catalogues, prints, business applications, plans, writings, and other developments or improvements and all other intellectual property and proprietary rights and any derivative work based thereon (the "**Inventions**") made, conceived, or completed by the Executive, alone or with others, during the period of his employment, whether or not during working hours, that are within the scope of the Employer's business operations or that relate to any of the Employer's work or projects (including any and all inventions based wholly or in part upon ideas conceived during the Executive's employment with the Employer), are the sole and exclusive property of the Employer. The Executive further agrees that (1) he will promptly disclose all Inventions to the Employer and hereby assigns to the Employer all present and future rights he has or may have in those Inventions, including without limitation those relating to patent, copyright, trademark or trade secrets; and (2) all of the Inventions eligible under the copyright laws are "work made for hire." At the request of the Employer, the Executive will do all things reasonably necessary to perfect title to the Inventions in the Employer and to assist in obtaining for the Employer such patents, copyrights or other protection as may be provided under law and desired by the Employer, including but not limited to executing and signing any and all relevant applications, assignments or other instruments. Notwithstanding the foregoing, the Employer hereby notifies the Executive that the provisions of this Paragraph 9 shall not apply to any Inventions for which no equipment, supplies, facility or trade secret information of the Employer was used and which were developed entirely on the Executive's own time, unless (1) the Invention relates (i) to the business of the Employer, or (ii) to actual or demonstrably anticipated research or development of the Employer, or (2) the Invention results from any work performed by the Executive for the Employer.

J. The Executive acknowledges and agrees that all customer lists, supplier lists, and customer and supplier information, including, without limitation, addresses and telephone numbers, are and shall remain the exclusive property of the Employer, regardless of whether such information was developed, purchased, acquired, or otherwise obtained by the Employer or the Executive. The Executive agrees to furnish to the Employer on demand at any time during the period of this Agreement, and upon the termination of this Agreement, any

records, notes, computer printouts, computer programs, computer software, price lists, microfilm, or any other documents related to the Employer's business, including originals and copies thereof. The Executive recognizes and agrees that he has no expectation of privacy with respect to the Employer's telecommunications, networking or information processing systems (including, without limitation, stored computer files, email messages and voice messages) and that the Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice.

K. The Executive acknowledges that he may become aware of "material" nonpublic information relating to the Employer or any of its customers whose stock is publicly traded. The Executive acknowledges that he is prohibited by law as well as by Employer policy from trading in the shares of the Employer or such customers while in possession of such information or directly or indirectly disclosing such information to any other persons so that they may trade in these shares. For purposes of this Paragraph K, "material" information may include any information, positive or negative, which might be of significance to an investor in determining whether to purchase, sell or hold the stock of publicly traded customers. Information may be significant for this purpose even if it would not alone determine the investor's decision. Examples include a potential business acquisition, internal financial information that departs in any way from what the market would expect, the acquisition or loss of a major contract, or an important financing transaction.

L. The Employer does not wish to incorporate any unlicensed or unauthorized material into its products or services or those of its subsidiaries. Therefore, the Executive agrees that he will not knowingly disclose to the Employer, use in the Employer's business, or cause the Employer to use, any information or material which is confidential or proprietary to any third party including, but not limited to, any former employer, competitor or client, unless the Employer has a right to receive and use such information. The Executive will not incorporate into his work any material which is subject to the copyrights of any third party unless the Employer has a written agreement with such third party or otherwise has the right to receive and use such information.

M. It is agreed that any breach or anticipated or threatened breach of any of the Executive's covenants contained in this Paragraph 9 will result in irreparable harm and continuing damages to the Employer and its business and that the Employer's remedy at law for any such breach or anticipated or threatened breach will be inadequate and, accordingly, in addition to any and all other remedies that may be available to the Employer at law or in equity in such event, any court of competent jurisdiction may issue a decree of specific performance or issue a temporary and permanent injunction, without the necessity of the Employer posting bond or furnishing other security and without proving special damages or irreparable injury, enjoining and restricting the breach, or threatened breach, of any such covenant, including, but not limited to, any injunction restraining the Executive from disclosing, in whole or part, any Confidential Information.

N. Contemporaneous with the execution and delivery of this Agreement, the Employer and Executive shall enter into an Indemnification Agreement in the form attached hereto as Exhibit A (the "**Indemnification Agreement**").

10. Notices. Any and all notices required in connection with this Agreement shall be deemed adequately given only if in writing and (a) personally delivered, or sent by first class, registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight courier, (b) sent by facsimile, provided a hard copy is mailed on that date to the party for whom such notices are intended, or (c) sent by other means at least as fast and reliable as first class mail. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it shall be delivered to the address required by this Agreement; (b) the date delivery shall have been refused at the address required by this Agreement; (c) with respect to notices sent by mail or overnight courier, the date as of which the Postal Service or overnight courier, as the case may be, shall have indicated such notice to be undeliverable at the address required by this Agreement; or (d) with respect to a facsimile, the date on which the facsimile is sent and receipt of which is confirmed. Any and all notices referred to in this Agreement, or which either party desires to give to the other, shall be addressed to his residence in the case of the Executive, or to its principal office in the case of the Employer.

11. Waiver of Breach. A waiver by one party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver or estoppel of any subsequent breach by such party. No waiver shall be valid unless in writing and signed by the Executive and an authorized officer of the Employer.

12. Assignment. The Executive acknowledges that the services to be rendered by him are unique and personal. Accordingly, the Executive may not assign any of his rights or delegate any of his duties or obligations under this Agreement. The rights and obligations of the Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Employer.

13. Entire Agreement/Survival. This Agreement, the Indemnification Agreement and the Stock Option Agreement set forth the entire and final agreement and understanding of the parties and contain all of the agreements made between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto, with respect to the subject matter hereof. No change or modification of this Agreement shall be valid unless in writing and signed by the Employer and the Executive. Notwithstanding anything herein to the contrary, Paragraphs 8 through 21 of this Agreement shall survive the expiration of the Executive's period of employment.

14. Severability. If any provision of this Agreement shall be found invalid or unenforceable for any reason, in whole or in part, then such provision shall be deemed modified, restricted, or reformulated to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law, as if such provision had been originally incorporated herein as so modified, restricted, or reformulated or as if such provision had not been originally incorporated herein, as the case may be. The parties further agree to seek a lawful substitute for any provision found to be unlawful; provided, that, if the parties are unable to agree upon a lawful substitute, the parties desire and request that a court or other authority called upon to decide the enforceability of this Agreement modify those restrictions in this Agreement that, once modified, will result in an agreement that is enforceable

to the maximum extent permitted by the law in existence at the time of the requested enforcement.

15. Headings. The headings in this Agreement are inserted for convenience only and are not to be considered a construction of the provisions hereof.

16. Execution of Agreement. This Agreement may be executed in several counterparts, each of which shall be considered an original, but which when taken together, shall constitute one agreement.

17. Recitals. The recitals to this Agreement are incorporated herein as an integral part hereof and shall be considered as substantive and not precatory language.

18. Non-Disparagement. During the Executive's employment with the Employer and thereafter, the Executive agrees not to make, publish or communicate at any time to any person or entity, including, but not limited to, customers, clients and investors of the Employer, its affiliates, or any entity affiliated with Philip A. Falcone, any Disparaging (defined below) remarks, comments or statements concerning the Employer, its affiliates, any entity affiliated with Philip A. Falcone, or any of their respective present and former members, partners, directors, officers, employees or agents. During the Executive's employment with the Employer and thereafter, senior officers and directors of the Employer and its Affiliates agree not to make, publish or communicate at any time to any person or entity any Disparaging remarks, comments or statements concerning the Executive. "Disparaging" remarks, comments or statements are those that impugn the character, honesty, integrity, morality, business acumen or abilities of the individual or entity being disparaged. This provision does not apply to truthful statements to a government or regulatory agency or to truthful testimony or pleadings in an arbitration, lawsuit or other judicial or administrative proceeding.

19. Arbitration. Any controversy, claim or dispute between the parties relating to the Executive's employment or termination of employment, whether or not the controversy, claim or dispute arises under this Agreement (other than any controversy or claim arising under Paragraph 9), shall be resolved by arbitration in accordance with the Employment Arbitration Rules and Mediation Procedures ("**Rules**") of the American Arbitration Association through a single arbitrator selected in accordance with the Rules. The decision of the arbitrator shall be rendered within thirty (30) days of the close of the arbitration hearing and shall include written findings of fact and conclusions of law reflecting the appropriate substantive law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof in the State of New York. In reaching his or her decision, the arbitrator shall have no authority (a) to authorize or require the parties to engage in discovery (provided, however, that the arbitrator may schedule the time by which the parties must exchange copies of the exhibits that, and the names of the witnesses whom, the parties intend to present at the hearing), (b) to interpret or enforce Paragraph 9 of the Agreement (for which Paragraph 20 shall provide the sole and exclusive venue), (c) to change or modify any provision of this Agreement, (d) to base any part of his or her decision on the common law principle of constructive termination, or (e) to award punitive damages or any other damages not measured by the prevailing party's actual damages and may not make any ruling, finding or award that does not conform to this

Agreement. Each party shall bear all of his or its own legal fees, costs and expenses of arbitration and one-half (1/2) of the costs of the arbitrator.

20. Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to its conflict of law provisions. Furthermore, as to Paragraph 9, the Executive agrees and consents to submit to personal jurisdiction in the state of New York in any state or federal court of competent subject matter jurisdiction situated in New York County, New York. The Executive further agrees that the sole and exclusive venue for any suit arising out of, or seeking to enforce, the terms of Paragraph 9 of this Agreement shall be in a state or federal court of competent subject matter jurisdiction situated in New York County, New York. In addition, the Executive waives any right to challenge in another court any judgment entered by such New York County court or to assert that any action instituted by the Employer in any such court is in the improper venue or should be transferred to a more convenient forum. **Further, the Executive waives any right he may otherwise have to a trial by jury in any action to enforce the terms of this Agreement.**

21. Beneficiaries/References. The Executive shall be entitled, to the extent permitted under applicable law, to select and change a beneficiary or beneficiaries to receive any compensation or benefit hereunder following the Executive's death by giving written notice thereof. In the event of the Executive's death or a judicial determination of his incompetence, references in this Agreement to the Executive shall be deemed, where appropriate, to refer to his beneficiary, estate or other legal representative.

22. No Mitigation/No Offset. The Executive shall be under no obligation to seek other employment or to otherwise mitigate the obligations of the Employer under this Agreement.

IN WITNESS WHEREOF, the parties have set their signatures on the date first written above.

HARBINGER GROUP INC.

EXECUTIVE:

a Delaware corporation

By: /s/ Philip A. Falcone
Chairman, CEO and President

/s/ Francis T. McCarron
Francis T. McCarron