

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

**FORM S-8**

**REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933**

**Pandora Media, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**94-3352630**

(I.R.S. Employer Identification No.)

**2101 Webster Street, Suite 1650  
Oakland, CA 94612**

(Address of Principal Executive Offices)

**2011 Equity Incentive Plan & 2014 Employee Stock Purchase Plan**

(Full title of the plan)

**Brian P. McAndrews  
Chief Executive Officer and President  
Pandora Media, Inc.**

**2101 Webster Street, Suite 1650  
Telephone: (510) 451-4100**

(Name, address and telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share				
- 2011 Equity Incentive Plan	7,815,837(2)	\$ 33.28 (4)	\$ 260,111,055 (4)	\$ 33,502.30
- 2014 Employee Stock Purchase Plan	4,000,000(3)	\$ 33.28 (4)	\$ 133,120,000 (4)	\$ 17,145.86
<b>Total</b>	<b>11,815,837</b>		<b>\$ 393,231,055</b>	<b>\$ 50,648.16</b>

(1) In the event of a stock split, stock dividend or similar transaction involving the Registrant's common stock, \$0.0001 par value per share ("Common Stock"), the number of shares registered hereby shall automatically be adjusted in accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act").

(2) Represents an annual increase to the number of shares of the Registrant's common stock reserved for issuance under its 2011 Equity Incentive Plan (the "2011 Plan").

(3) Represents shares that may be issued under its 2014 Employee Stock Purchase Plan (the "2014 ESPP") if the 2014 ESPP is approved by the Registrant's stockholders at its next annual meeting.

(4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act. The Proposed Maximum Offering Price Per Share is the average of the high and low prices of the Registrant's Common Stock as reported on the New York Stock Exchange on January 27, 2014 (rounded up to the nearest cent).

**PART I**

**EXPLANATORY NOTE**

This Registration Statement is being filed for the purpose of (i) registering shares of Pandora Media, Inc.'s (the Registrant) common stock pursuant to an annual increase to the number of shares of common stock reserved for issuance under its 2011 Equity Incentive Plan and (ii) registering shares of the Registrant's common stock that may be issued under its 2014 ESPP if the 2014 ESPP is approved by the Registrant's stockholders at its next annual meeting.

The Registrant has adopted the 2014 ESPP, subject to approval by the Registrant's stockholders at the Registrant's next annual meeting. The purpose of the 2014 ESPP is to provide eligible employees with an opportunity to purchase shares by means of payroll deductions or contributions, and it is the intention of the Registrant that the 2014

ESPP qualify as an “employee stock purchase plan” under Section 423 of the Internal Revenue Code, to the extent specified in the 2014 ESPP. No shares will be issued under the 2014 ESPP unless and until such stockholder approval is obtained. If the Registrant’s stockholders do not approve the 2014 ESPP, the offering under this Registration Statement with respect to the shares to be issued under the 2014 ESPP will be terminated prior to issuance of any shares under the 2014 ESPP.

## INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENT ON FORM S-8

The Registrant previously registered shares of its common stock for issuance under the 2011 Equity Incentive Plan under a Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the “SEC”) on July 6, 2011 (File No. 333-175378), and registered additional shares of its common stock for issuance under such Plan under Registration Statements on Form S-8 filed with the SEC on June 19, 2012 and March 18, 2013 (File Nos. 333-182212 and 333-187340). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statements referenced above.

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## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed with the Commission pursuant to the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated by reference herein:

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended January 31, 2013 filed with the SEC on March 18, 2013;
- (b) The Registrant’s Quarterly Reports on Form 10-Q for the fiscal quarters ended April 30, 2013, July 31, 2013 and October 31, 2013, filed with the SEC on May 29, 2013, August 27, 2013 and November 27, 2013, respectively;
- (c) The Registrant’s Current Reports on Form 8-K filed with the SEC on February 4, 2013, March 7, 2013, April 10, 2013, June 7, 2013, July 17, 2013, August 23, 2013, September 11, 2013, September 13, 2013, September 16, 2013, September 18, 2013 and September 19, 2013; and
- (d) The description of the Registrant’s Common Stock contained in the Registrant’s registration statement on Form 8-A (File No. 001-35198), filed by the Registrant with the Commission under Section 12(b) of the Exchange Act on June 8, 2011, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such documents; except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under current Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### ITEM 4. DESCRIPTION OF SECURITIES

Not Applicable.

#### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not Applicable.

#### ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Registrant’s amended and restated certificate of incorporation (the “Certificate”) and amended and restated bylaws (the “Bylaws”) provide that the Registrant will indemnify its directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law, which prohibits the Certificate from limiting the liability of the Registrant’s directors for the following:

- breach of the director’s duty of loyalty to the corporation or its stockholders,
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,
- unlawful payment of dividends or unlawful stock purchases or redemptions, and
- any transaction from which a director derived an improper personal benefit.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of the Registrant’s directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. The Certificate does not eliminate a director’s duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of nonmonetary relief, remain available under Delaware law. This provision also does not affect a director’s responsibilities under any other laws, such as the federal securities laws or other state or federal laws. Under the Bylaws, the Registrant is empowered to enter into indemnification agreements with its directors, officers, employees and other agents and to purchase insurance on behalf of any person whom the Registrant is required or permitted to indemnify.

In addition to the indemnification required in the Certificate and the Bylaws, the Registrant has entered into agreements to indemnify our directors and executive officers, and other employees as determined by the Registrant’s board of directors, against expenses and liabilities to the fullest extent permitted by Delaware law. These agreements also provide, subject to certain exceptions, for indemnification for related expenses including, among others, attorneys’ fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. The Registrant believes that the provisions in the Certificate, the Bylaws and the indemnification agreements are necessary to attract and retain qualified persons as directors and executive officers. The Registrant also maintains directors’ and officers’ liability insurance to cover liabilities its directors and officers may incur in connection with their services to the Registrant.

#### ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not Applicable.

**ITEM 8. EXHIBITS**

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Filing Date	
4.1	Amended and Restated Certificate of Incorporation	S-1/A	333-172215	April 1, 2011	3.1
4.2	Amended and Restated Bylaws	S-1/A	333-172215	April 1, 2011	3.2
5.1	Opinion of Davis Polk & Wardwell LLP				X
23.1	Consent of Independent Registered Public Accounting Firm				X
23.2	Consent of Davis Polk & Wardwell LLP (contained in Exhibit 5.1)				X
24.1	Power of Attorney (included on the signature page of this registration statement)				X
99.1	2011 Equity Incentive Plan	S-1/A	333-172215	May 25, 2011	10.1
99.2	2014 Employee Stock Purchase Plan				X

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**ITEM 9. UNDERTAKINGS**

A. The undersigned Registrant hereby undertakes:

- 1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 (the "1933 Act"), (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into this Registration Statement;
- 2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and
- 3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers, or controlling persons of the Registrant pursuant to the indemnification foregoing provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the 1933 Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Oakland, State of California, on this 28th day of January 2014.

Pandora Media, Inc.

By: /s/ Brian P. McAndrews  
Name: Brian P. McAndrews  
Title: Chief Executive Officer, President and Chairman of the Board

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below, constitutes and appoints Brian P. McAndrews, Michael S. Herring and Delida Costin and each of them, our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to do any and all acts and things and execute, in the name of the undersigned, any and all instruments which said attorneys-in-fact and agents may deem necessary or advisable in order to enable Pandora Media, Inc. to comply with the Securities Act of 1933 and any requirements of the Securities and Exchange Commission in respect thereof, in connection with the filing with the Securities and Exchange Commission of the registration statement on Form S-8 under the Securities Act of 1933, including specifically but without limitation, power and

authority to sign the name of the undersigned to such registration statement, and any amendments to such registration statement (including post-effective amendments), and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, to sign any and all applications, registration statements, notices or other documents necessary or advisable to comply with applicable state securities laws, and to file the same, together with other documents in connection therewith with the appropriate state securities authorities, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and to perform each and every act and thing requisite or necessary to be done in and about the premises, as fully and to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

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Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
<u>/s/ Brian P. McAndrews</u> Brian P. McAndrews	Chief Executive Officer, President and Chairman of the Board (Principal Executive Officer)	January 28, 2014
<u>/s/ Michael S. Herring</u> Michael S. Herring	Chief Financial Officer (Principal Financial and Accounting Officer)	January 28, 2014
<u>/s/ Peter Chernin</u> Peter Chernin	Director	January 28, 2014
<u>/s/ James M. P. Feuille</u> James M. P. Feuille	Director	January 28, 2014
<u>/s/ Peter Gotcher</u> Peter Gotcher	Director	January 28, 2014
<u>/s/ Robert Kavner</u> Robert Kavner	Director	January 28, 2014
<u>/s/ Elizabeth A. Nelson</u> Elizabeth A. Nelson	Director	January 28, 2014
<u>/s/ David Sze</u> David Sze	Director	January 28, 2014
<u>/s/ Tim Westergren</u> Tim Westergren	Director	January 28, 2014

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#### INDEX TO EXHIBITS

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99.2	2014 Employee Stock Purchase Plan				X

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January 28, 2014

Pandora Media, Inc.  
2101 Webster Street, Suite 1650  
Oakland, CA 94612

Ladies and Gentlemen:

We have acted as counsel to Pandora Media, Inc., a Delaware corporation (the "Company"), and are delivering this opinion in connection with the Company's Registration Statement on Form S-8 (the "Registration Statement") filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, for the registration of 11,815,837 shares (the "Shares") of the Company's Common Stock, par value \$0.0001 per share, issuable pursuant to the Company's 2011 Equity Incentive Plan and 2014 Employee Stock Purchase Plan (each, a "Plan").

We have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purposes of rendering this opinion.

In rendering the opinion expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all documents filed as exhibits to the Registration Statement that have not been executed will conform to the forms thereof, (iv) all signatures on all documents that we reviewed are genuine, (v) all natural persons executing documents had and have the legal capacity to do so, (vi) all statements in certificates of public officials and officers of the Company that we reviewed were and are accurate and (vii) all representations made by the Company as to matters of fact in the documents that we reviewed were and are accurate.

On the basis of the foregoing, we are of the opinion that the Shares have been duly authorized and, when and to the extent issued pursuant to the applicable Plan upon receipt by the Company of the payment therefor, will be validly issued, fully paid and non-assessable.

We are members of the Bars of the States of California and New York, and the foregoing opinion is limited to the General Corporation Law of the State of Delaware.

We consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement.

Very truly yours,

/s/ Davis Polk & Wardwell LLP

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2011 Equity Incentive Plan and 2014 Employee Stock Purchase Plan of Pandora Media, Inc. of our reports dated March 18, 2013, with respect to the consolidated financial statements of Pandora Media, Inc. and the effectiveness of internal control over financial reporting of Pandora Media, Inc., included in its Annual Report (Form 10-K) for the year ended January 31, 2013, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Francisco, California  
January 28, 2014

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## PANDORA MEDIA, INC.

## EMPLOYEE STOCK PURCHASE PLAN

Section 1. *Purpose of the Plan.*

The purpose of this Pandora Media, Inc. Employee Stock Purchase Plan (the “**Plan**”) is to provide Eligible Employees (as defined below) with an opportunity to acquire an equity interest in Pandora Media, Inc. (the “**Company**”) by purchasing shares of the Company’s common stock (the “**Stock**”) in a convenient manner. This Plan is intended to qualify under Section 423 of the Internal Revenue Code of 1986, as amended (the “**Code**”).

Section 2. *Administration of the Plan.*

(a) Committee Composition. The Plan shall be administered by the Board of Directors (the “**Board**”) or by a committee of the Board designated to administer this Plan (the “**Committee**”). Unless otherwise determined by the Board, the Compensation Committee of the Board shall be the “**Committee**” hereunder. To the extent permitted by law, the Committee may delegate responsibilities for day-to-day administration of the Plan to one or more officers of the Company.

(b) Committee Responsibilities.

(i) The Committee shall interpret the Plan and make all other policy decisions relating to the operation of the Plan. The Committee may adopt such rules, guidelines and forms as it deems appropriate to implement the Plan. The Committee’s determinations under the Plan shall be final and binding on all persons.

(ii) The Committee may determine the Participating Companies hereunder from time to time. A “**Participating Company**” means (i) the Company and (ii) each present or future Subsidiary designated by the Committee as a Participating Company. A “**Subsidiary**” means a “subsidiary corporation” of the Company as defined in Section 424(f) of the Code.

Section 3. *Enrollment and Participation.*

(a) Offering Periods. An “**Offering Period**” means a period with respect to which the right to purchase Stock may be granted under the Plan, as determined pursuant to this Section 3(a). Unless and until otherwise determined by the Committee, two Offering Periods shall commence in each calendar year on each February 16 and August 16, and each Offering Period shall consist of one Purchase Period. The Committee may change the duration of Offering Periods if such change is announced prior to the scheduled beginning of the first Offering Period to be affected; *provided* that no Offering Period may be longer than 27 months. An “**Offering Date**” means the first day of each Offering Period.

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(b) Purchase Periods. A “**Purchase Period**” means a period during which contributions may be made toward the purchase of Stock under the Plan, as determined pursuant to this Section 3(b). Unless and until otherwise determined by the Committee, the Purchase Periods shall consist of the six-month periods commencing on each February 16 and August 16 and ending on August 15 and February 15, respectively. The Committee may change the duration and timing of Purchase Periods at any time if such change is announced prior to the scheduled beginning of the first Purchase Period to be affected; *provided* that no Purchase Period may be longer than 27 months. A “**Purchase Date**” means the last day of each Purchase Period (or, if such day is not a trading day, the trading day immediately preceding such day).

(c) Eligibility and Enrollment.

(i) An “**Eligible Employee**” means any employee of a Participating Company; *provided* that the Committee, in its discretion, from time to time (i) may determine that Eligible Employees who customarily work twenty (20) hours or less per week or not more than five (5) months in any calendar year (or, in each case, such lesser period of time as may be determined by the Committee in its discretion) shall not be included in the Plan or an Offering Period and (ii) may exclude employees that fall into an excludable category as described in Section 423 of the Code and the regulations thereunder. The foregoing notwithstanding, an individual shall not be considered an Eligible Employee if his or her participation in the Plan is prohibited by the law of any country that has jurisdiction over him or her or if complying with the laws of the applicable jurisdiction would cause the Plan or an Offering Period to violate Section 423 of the Code.

(ii) Any individual who, on the day preceding the first day of an Offering Period, qualifies as an Eligible Employee may elect to become a participant in the Plan for such Offering Period by, prior to the commencement of such Offering Period, following the procedures specified by the Company in the manner and by the deadline specified by the Company from time to time. An Eligible Employee who so elects to participate in the Plan is referred to herein as a “**Participant**”. The Company shall establish an account on its books for each such Participant (a “**Plan Account**”).

(d) Duration of Participation. Once enrolled in the Plan, a Participant shall continue to participate in the Plan until he or she ceases to be an Eligible Employee or withdraws from the Plan under Section 5(a).

Section 4. *Participant Contributions.*

(a) Frequency of Payroll Deductions. A Participant may purchase shares of Stock under the Plan solely by means of payroll deductions. Payroll deductions, as designated by the Participant pursuant to Subsection (b) below, shall occur on each payday during participation in the Plan.

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(b) Amount of Payroll Deductions. As part of the enrollment procedures described in Section 3(c) above, an Eligible Employee shall designate the portion of his or her Compensation (as defined below) that he or she elects to have withheld on each payday during the applicable Purchase Period for the purchase of Stock. Such portion shall be a whole percentage of the Eligible Employee’s Compensation, but not less than 1% nor more than 15%. For purposes of this Plan, “**Compensation**” means all base straight-time gross earnings, exclusive of commissions, payments for incentive compensation, bonuses, overtime, shift premium and other similar compensation, unless otherwise determined by the Committee on a uniform and nondiscriminatory basis; *provided* that the Committee shall have the discretion to determine the application of this definition to Participants outside the United States.

(c) Changing Withholding Rate. If a Participant wishes to increase or decrease the rate of payroll withholding to be effective for the next Purchase Period, he or she may do so, subject to the limits set forth in clause (b) above, by following the procedures specified by the Company in the manner and by the deadline specified by the Company from time to time. If a Participant wishes to decrease the rate of payroll withholding to be effective during an ongoing Purchase Period, he or she may do one (1) time during a Purchase Period by following the procedures specified by the Company in the manner and by the deadline specified by the Company from time to time; *provided* that such decreased withholding rate shall be subject to the limits set forth in clause (b) above except that the decreased withholding rate may be 0%.

Section 5. *Withdrawal from the Plan.*

(a) Withdrawal. A Participant may elect to withdraw from the Plan by following the procedures specified by the Company in the manner and by the deadline specified by the Company from time to time. As soon as reasonably practicable thereafter, payroll deductions shall cease and the entire amount credited to the Participant's Plan Account shall be refunded to him or her in cash, without interest. No partial withdrawals shall be permitted.

(b) Re-enrollment After Withdrawal. A former Participant who has withdrawn from the Plan shall not be a Participant until he or she re-enrolls in the Plan under Section 3(c). Re-enrollment may be effective only at the commencement of the next Offering Period.

Section 6. *Change in Employment Status.*

(a) Termination of Employment. Termination of employment as an Eligible Employee for any reason, including death, shall be treated as an automatic withdrawal from the Plan under Section 5(a). A transfer of employment from one Participating Company to another Participating Company shall not be treated as a termination of employment.

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(b) Leave of Absence. For purposes of the Plan, and to the extent consistent with Section 423 of the Code, employment shall not be deemed to terminate when the Participant goes on a military leave, a sick leave or another bona fide leave of absence approved by the Participating Company so long as the leave does not exceed three months or, if longer than three months, the individual's right to reemployment is provided by statute or has been agreed to by contract or in a written policy of the Company which provides for a right of reemployment following the leave of absence.

(c) Death. In the event of the Participant's death, the amount credited to his or her Plan Account shall be paid to a beneficiary designated by him or her for this purpose on the prescribed form or, if none, to the Participant's estate. Such form shall be valid only if, before the Participant's death, it was filed with the Company in accordance with the Company's procedures.

Section 7. *Plan Accounts and Purchase of Shares.*

(a) Plan Accounts. The Company shall maintain a Plan Account on its books in the name of each Participant. Whenever an amount is deducted from the Participant's Compensation under the Plan, such amount shall be credited to the Participant's Plan Account. Amounts credited to Plan Accounts shall not be trust funds and may be commingled with the Company's general assets and applied to general corporate purposes. No interest shall be credited to Plan Accounts.

(b) Purchase Price. The "**Purchase Price**" means the price at which Participants may purchase a share of Stock under the Plan, which shall be the lower of:

(i) 85% of the Fair Market Value of a share of Stock on the Purchase Date; or

(ii) 85% of the Fair Market Value of a share of Stock on the Offering Date (of, if the Offering Date is not a trading day, on the first trading day following the Offering Date);

*provided that* the "Fair Market Value" shall be equal to the closing price of the Stock on the stock exchange on the date in question or, if the foregoing provision is not applicable, then as determined by the Committee in good faith on such basis as it deems appropriate.

(c) Number of Shares Purchased. As of each Purchase Date, each Participant shall be deemed to have elected to purchase the number of shares of Stock calculated in accordance with this Plan, unless the Participant has previously elected to withdraw from the Plan in accordance with Section 5(a). Subject to the limits set forth in Section 8 below, the amount then in the Participant's Plan Account shall be divided by the Purchase Price, and the number of shares that results shall be purchased with the funds in the Participant's Plan Account. The Committee may determine with respect to all Participants that any fractional share, as calculated under this subsection (c), shall be (i) rounded down to the next lower whole share or (ii) credited as a fractional share.

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(d) Available Shares Insufficient. In the event that the aggregate number of shares that all Participants elect to purchase during an Purchase Period exceeds the maximum number of shares remaining available for issuance under Section 13(a), then the number of shares to which each Participant is entitled shall be determined by multiplying the number of shares available for issuance by a fraction, the numerator of which is the number of shares that such Participant has elected to purchase and the denominator of which is the number of shares that all Participants have elected to purchase.

(e) Delivery of Shares. By enrolling in the Plan, each Participant shall be deemed to have authorized the establishment of a brokerage account on his or her behalf at a securities brokerage firm selected by the Committee. Alternatively, the Committee may provide for a Plan share account for each Participant to be established by the Company or by an outside entity selected by the Company which is not a brokerage firm. As soon as reasonably practicable after each Purchase Date, the Company shall arrange for the delivery to each Participant of the shares purchased hereunder to the Participant's brokerage or Plan share account in a form determined by the Company. Notwithstanding any other provision of the Plan, unless otherwise determined by the Committee or required by any applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing shares issued in connection with any purchase under the Plan, and instead such shares shall be recorded in the books of the brokerage firm selected by the Company or, as applicable, the Company, its transfer agent, stock plan administrator or such other outside entity which is not a brokerage firm.

(f) Unused Cash Balances. Following the end of any Purchase Period, any amount remaining in the Participant's Plan Account shall, at the discretion of the Committee, either be refunded to the Participant in cash, without interest, or be retained in the Participant's Plan Account for the next Purchase Period but only to the extent representing the unused Purchase Price for fractional shares.

(g) Stockholder Approval. Any other provision of the Plan notwithstanding, no shares of Stock shall be purchased under the Plan unless and until the Company's stockholders have approved the adoption of the Plan.

Section 8. *Limitations on Stock Purchases Under the Plan.*

(a) Share Limit. With respect to any Purchase Period, no Participant shall purchase more than 15,000 shares of Stock (or such other number of shares of Stock as may be determined by the Committee prior to the start of any Purchase Period) nor more than the amounts of Stock set forth in Sections 8(c) and 13(a).

(b) Dollar Limit. No Participant shall be granted a purchase right under the Plan which permits his or her rights to purchase stock under all employee stock purchase plans under Section 423 of the Code of the Company and its Subsidiaries to accrue at a rate which exceeds \$25,000 of fair market value of such stock (determined at the time the purchase right is granted) for each calendar year in which such purchase right is outstanding at any time, as determined under Section 423 of the Code and the applicable rules and regulations thereunder. If a Participant is precluded by this subsection (b) from purchasing additional Stock under the Plan, then his or her employee contributions shall automatically be discontinued and shall resume at the beginning of the earliest Purchase Period ending in the next calendar year (if he or she then is an



(c) Limit on Five Percent Holders. Any other provision of the Plan notwithstanding, no Participant shall be granted a right to purchase Stock under the Plan if such Participant, immediately after his or her election to purchase such Stock, would own stock and/or hold outstanding purchase rights to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or any parent or Subsidiary of the Company, determined pursuant to Section 423 of the Code.

Section 9. *Rights Not Transferable.*

The rights of any Participant under the Plan, or any Participant's interest in any Stock or moneys to which he or she may be entitled under the Plan, shall not be transferable by voluntary or involuntary assignment or by operation of law, or in any other manner other than by beneficiary designation or the laws of descent and distribution. If a Participant in any manner attempts to transfer, assign or otherwise encumber his or her rights or interest under the Plan, other than by beneficiary designation or the laws of descent and distribution, then such act shall be treated as an election by the Participant to withdraw from the Plan under Section 5(a).

Section 10. *No Rights as an Employee.*

Nothing in the Plan or in any right granted under the Plan shall confer upon the Participant any right to continue in the employ of a Participating Company for any period of specific duration or interfere with or otherwise restrict in any way any rights of the Participating Companies or of the Participant to terminate his or her employment at any time and for any reason, with or without cause.

Section 11. *No Rights as a Stockholder.*

A Participant shall have no rights as a stockholder with respect to any shares of Stock that he or she may have a right to purchase under the Plan until such shares have been purchased on the applicable Purchase Date and issued to the Participant.

Section 12. *Securities Law Requirements.*

Shares of Stock shall not be issued under the Plan unless the issuance and delivery of such shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

Section 13. *Stock Offered under the Plan.*

(a) Authorized Shares. The aggregate number of shares of Stock available for purchase under the Plan shall be 4,000,000, subject to adjustment pursuant to Section 13(b).

(b) Antidilution Adjustments. The aggregate number of shares of Stock offered under the Plan, the share limitation described in Section 8(a) and the price of shares that any Participant has elected to purchase shall be adjusted proportionately by the Committee for any increase or decrease in the number of outstanding shares of Stock resulting from a subdivision or consolidation of shares or the payment of a stock dividend, any other increase or decrease in such shares effected without receipt or payment of consideration by the Company, the distribution of the shares of a Subsidiary to the Company's stockholders or a similar event.

(c) Reorganizations.

(i) "Corporate Reorganization" means:

- (A) The consummation of a merger or consolidation of the Company with or into another entity, or any other corporate reorganization; or
- (B) The sale, transfer or other disposition of all or substantially all of the Company's assets or the complete liquidation or dissolution of the Company.

(ii) Any other provision of the Plan notwithstanding, prior to the effective time of a Corporate Reorganization, any Offering Period and Purchase Period then in progress shall terminate and shares shall be purchased pursuant to Section 7 on a date prior to such effective time as determined by the Committee in its sole discretion, unless the Plan is continued by the Company or assumed by the surviving corporation or its parent corporation pursuant to the plan of merger or consolidation. The Plan shall in no event be construed to restrict in any way the Company's right to undertake a dissolution, liquidation, merger, consolidation or other reorganization.

Section 14. *Amendment or Discontinuance.*

The Board or the Committee shall have the right to amend, suspend or terminate the Plan at any time and without notice. Except as provided in Section 13, any increase in the aggregate number of shares of Stock to be issued under the Plan shall be subject to approval by a vote of the stockholders of the Company, and no amendment shall be made which shall allow a Purchase Price for offerings under the Plan to be less than the lower of (i) 85% of the Fair Market Value on the Offering Date or (ii) 85% of the Fair Market Value on the Purchase Date. The Committee may adopt and amend stock purchase sub-plans with respect to employees of non-U.S. Subsidiaries with such provisions as the Committee may deem appropriate to conform with local laws, practices and procedures. All such sub-plans shall be subject to the limitations on the amount of Stock that may be issued under the Plan and, except to the extent otherwise provided in such sub-plans, shall be subject to all of the provisions set forth herein but shall be considered separate offerings under the Plan.