

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 29, 2013**

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**MANHATTAN ASSOCIATES, INC.**

(Exact Name of Registrant as Specified in Its Charter)

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**Georgia**  
(State or Other Jurisdiction  
of Incorporation or organization)

**0-23999**  
(Commission  
File Number)

**58-2373424**  
(I.R.S. Employer  
Identification No.)

**2300 Windy Ridge Parkway, Suite 1000, Atlanta, Georgia**  
(Address of Principal Executive Offices)

**30339**  
(Zip Code)

**(770) 955-7070**  
(Registrant's telephone number, including area code)

**NONE**  
(Former name or former address, if changed since last report)

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

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

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

Executive Employment Agreements

On March 29, 2013, Manhattan Associates, Inc. (the “Company”) entered into executive employment agreements (the “Executive Agreements”), in substantially the form filed herewith as Exhibit 10.1, with each of the named executive officers of the Company, which includes the Company’s (i) President and Chief Executive Officer, Eddie Capel; (ii) Executive Vice President, Chief Financial Officer and Treasurer, Dennis B. Story; (iii) Executive Vice President, Americas, Jeffrey S. Mitchell; and (iv) Senior Vice President, Chief Legal Officer and Secretary, Bruce S. Richards. The Executive Agreements replace the executive employment agreements and separation and non-compete agreements previously in effect with each of the named executive officers. The Executive Agreements were approved by the Board of Directors, upon the recommendation of the Compensation Committee. In considering the Executive Agreements, the Board and the Compensation Committee were advised by an independent compensation consultant and outside legal counsel.

The Executive Agreements provide that each executive will be: (i) paid an annual base salary; (ii) eligible for an annual performance-related bonus; (iii) eligible for equity awards that reflect the executive’s position, duties, and responsibilities with the Company; (iv) eligible to participate in all other benefit plans, programs, and arrangements generally available to executives of the Company; (v) provided an indemnification agreement, under which the Company will indemnify the executive to the full extent permitted by law with respect to any claim arising out of the executive’s service as an officer, director, or employee of the Company; and (vi) covered by a director and officer liability insurance policy. As set forth in their respective Executive Agreements, the annual base salaries of Messrs. Capel, Story, Mitchell and Richards are initially set at \$475,000, \$360,000, \$370,000 and \$283,000, respectively. Each executive’s annual base salary is subject to increases at the discretion of the Board or the Compensation Committee.

The executives’ employment under the Executive Agreements can be terminated at any time by the Company or by the applicable executive. If the Company terminates the executive’s employment for reasons other than death, disability, or “cause” (as defined in the Executive Agreements) or if the executive terminates his employment for “constructive termination” (as defined in the Executive Agreements), the executive will be entitled to severance payments equal to continuation of his base salary for 12 months and 12 months of COBRA coverage for family medical and dental benefits. In addition, if the executive’s termination under the circumstances described in the preceding sentence occurs on or within 24 months following a “change of control” (as defined in the Executive Agreements), the executive will be entitled to (i) a pro rata bonus for the year of termination; and (ii) an additional bonus amount equal to the greater of his target bonus for the year of termination or for the prior year. If a change of control occurs, any unvested equity awards outstanding at the time of the change in control will remain in effect in accordance with their terms (or the Company may provide the executive with substantially equivalent substitute equity awards of the survivor or purchasing entity or its parent). If on or within 24 months following a change of control, the Company (or its successor) terminates the executive without cause or the executive suffers a “constructive termination” (as defined in the Executive Agreements), then any outstanding unvested equity awards (or the substituted equity awards) will fully vest. In general, severance payments to an executive are limited such that he will not receive any “parachute payment” as described in Section 280G of the Internal Revenue Code of 1986, as amended. The executive is required to provide the Company with a general release of all claims in order to receive any severance payments or benefits.

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The Executive Agreements contain provisions requiring the executive to protect the proprietary and confidential information of the Company. In addition, for a period of 12 months after termination of employment for any reason (or, if later, the last date any severance payments are due), the executive agrees not to solicit the Company's customers or to solicit or hire away the Company's employees and is prohibited from performing duties of the type performed for the Company for a competing business owned by any of a designated group of companies. The executive also agrees to assign to the Company all patents, inventions, copyrights and other intellectual property developed by him in the course of his employment.

This summary of the terms and conditions of the Executive Agreements is qualified in its entirety by reference to the full text of the form of Executive Agreement, which is filed herewith as Exhibit 10.1, and incorporated by reference herein.

Director and Officer Indemnification Agreements

Also on March 29, 2013, the Company entered into updated director and officer indemnification agreements (the "Indemnification Agreements"), in substantially the form filed herewith as Exhibit 10.2, with each of the directors currently serving on the Board and certain officers of the Company, including the named executive officers. The Indemnification Agreements replace any indemnification agreements previously in effect with each of the directors and executive officers of the Company and provide indemnification similar to that provided in the Company's Bylaws.

This description of the Indemnification Agreements is qualified in its entirety by reference to the full text of the form of Indemnification Agreement, which is filed herewith as Exhibit 10.2, and incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Exhibit Description</u>
10.1	Form of Executive Employment Agreement
10.2	Form of Director and Officer Indemnification Agreement

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

**MANHATTAN ASSOCIATES, INC.**

By: /s/ Dennis B. Story

*Dennis B. Story*

Executive Vice President, Chief Financial Officer and  
Treasurer

Dated: April 4, 2013

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Exhibit Description</u>
10.1	Form of Executive Employment Agreement
10.2	Form of Director and Officer Indemnification Agreement



FORM OF EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this "Agreement") is entered into as of the "Effective Date" set forth below, by and between Manhattan Associates, Inc., a Georgia corporation ("Company"), and the undersigned "Executive."

In consideration of Company's employment and continued employment of Executive, Company and Executive agree as follows:

1. Contents of Agreement. This Agreement consists of this Signature Page and attached Schedules A ("General Terms and Conditions"), B ("Position and Certain Compensation Information"), C ("Non-compete Company List"), and D ("Release"), each of which is incorporated into this Agreement by reference.

2. Definitions. Except as otherwise defined in this Agreement, capitalized terms will have the meanings set forth in Section 1 of Schedule A entitled "Definitions."

THIS AGREEMENT WILL BECOME EFFECTIVE WHEN SIGNED BY BOTH PARTIES BELOW AND AS OF THE DATE SIGNED BY EXECUTIVE BELOW.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

EXECUTIVE

[Name of Executive]
[Address of Executive]

COMPANY

Manhattan Associates, Inc.
2300 Windy Ridge Parkway, Tenth Floor
Atlanta, GA 30339

EXECUTIVE SIGNATURE

AUTHORIZED SIGNATURE

NAME PRINTED

NAME & TITLE PRINTED

EFFECTIVE DATE

DATE

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SCHEDULE A GENERAL TERMS AND CONDITIONS

**1. Definitions.** Except as otherwise specified in this Agreement, the definitions of the capitalized terms set forth in this Section 1 will apply with respect to the entire Agreement.

**1.1 Agreement.** This Executive Employment Agreement.

**1.2 Base Salary.** Executive's base salary as set forth on Schedule B, as may be increased annually at the discretion of the Board or the Committee.

**1.3 Board.** Company's Board of Directors as constituted from time to time.

**1.4 Bonus Target Amount.** The target amount for Executive's Performance-related Bonus, as set forth on Schedule B, as may be adjusted annually at the discretion of the Board or the Committee.

**1.5 Cause.** An act or acts or omission or omissions to act by Executive involving Executive's (i) willful and continued failure substantially to perform their duties with Company (other than a failure resulting from Executive's Disability) and that failure continues for thirty (30) days following written notice from Company to Executive that provides a reasonable description of the basis for the determination that Executive has failed to perform their duties, (ii) conviction for a criminal offense other than a misdemeanor not disclosable under the federal securities laws, (iii) willful and continued failure to cooperate with any investigation or similar proceeding involving Company by any governmental authority regarding any material breach of law or regulation and continuation of that failure for thirty (30) days following written notice from Company to Executive that provides a reasonable description of the basis for the determination that Executive has failed to cooperate; (iv) breach of this Agreement in any material respect where that breach is not susceptible to remedy or cure or has already materially damaged Company, or is susceptible to remedy or cure and no such material damage yet has occurred, and is not cured or remedied reasonably promptly after specific written notice from Company to Executive that provides a reasonable description of the breach, or (v) conduct that the Board has determined, reasonably and in good faith, to be dishonest, fraudulent, unlawful, or grossly negligent, or does not comply with Company's Code of Conduct or materially fails to comply with a set of standards of conduct and business practices that have been labeled as such and provided by Company to Executive prior to that conduct, which is not cured to the reasonable satisfaction of the Board within thirty (30) days of written notice from the Board to Executive.

**1.6 Change of Control.** The occurrence of any of the following events:

(i) Any transaction or series of transactions pursuant to which Company sells, transfers, leases, exchanges, or disposes of all or substantially all (*i.e.*, at least eighty-five percent (85%)) of its assets for cash or property, or for a combination of cash and property, or for other consideration;

(ii) Any transaction pursuant to which one or more Persons acquire by merger, consolidation, reorganization, division, or other business combination or transaction, or by a purchase of an interest in Company, an interest in Company so that after that transaction, the shareholders of Company immediately prior to that transaction no longer have a controlling (*i.e.*, fifty percent (50%) or more) voting interest in Company;

(iii) Any change in the composition of the Board within a twelve (12) month period resulting in fewer than a majority of the directors being Incumbent Directors; or

(iv) Any transaction or series of transactions pursuant to which any Person or Persons acting in concert acquire outstanding voting securities of Company, if, after that transaction or those transactions, the acquiring Persons own, control, or hold, with power to vote, at least forty percent (40%) of any class of voting securities of Company.

**1.7 Code.** The Internal Revenue Code of 1986, as amended.

**1.8 Committee.** The Compensation Committee of the Board.

**1.9 Company.** As defined in the Preamble to this Agreement; *provided, however*, where the context reasonably requires, "Company" also will include Manhattan Associates, Inc.'s affiliates.

**1.10 Company Business.** The business of developing, marketing, selling, licensing, installing, implementing, deploying, servicing, and maintaining supply chain computer software solutions designed for one or more of the following: (i) management of warehouses and distribution centers; (ii) management of transportation logistics throughout the supply chain, including carrier management, transportation procurement, and transportation execution; (iii) product order, fulfillment and returns processes; (iv) retail, wholesale, and multi-channel inventory planning and management; (v) supply chain event monitoring and reporting; and (vi) supply chain analysis and evaluation.

**1.11 Competing Business.** Activities, products, or services that are the same as or similar to the Company Business.

**1.12 Confidential Information.** (A) Any and all data and information in whatever form: (i) relating to or arising from the business of Company, or of third Persons, regardless of whether the data or information constitutes a trade secret as defined by applicable law; (ii) disclosed to Executive or of which Executive becomes or became aware as a consequence of Executive's relationship with Company; (iii) having value to Company; (iv) not generally known to competitors of Company; and (v) which includes, without limitation: trade secrets; methods of operation; customer and prospective customer information; price lists; financial information and projections; Company organizational structure information; business plans and strategies; Company product information including design, development, and marketing information, installation and configuration guides, user manuals, functional and technical specifications, data models and data dictionaries, and software source code; Company policies, processes, methods, and procedures; Company inventions and discoveries; and similar information; and (B) third party confidential information in Company's possession.

**1.13 Constructive Termination.** The occurrence during Executive's employment of any one of the events set forth in (i) through (vi) below and satisfaction of the following conditions: (a) Executive provides notice to Company of the Constructive Termination condition within ninety (90) days of their learning of its initial existence; (b) Company fails to remedy the Constructive Termination condition within thirty (30) days following the notice; and (c) Executive terminates their employment within six (6) months of their learning of the existence of the Constructive Termination condition. The Constructive Termination events are as follows: (i) a material adverse change in Executive's authority, duties, or responsibilities; (ii) a material failure to pay Executive the compensation required by this Agreement; (iii) after a Change of Control, (a) relocation of Company's headquarters more than thirty (30) miles outside of the Atlanta, Georgia, greater metropolitan area or (b) Company requiring Executive to be based more than thirty (30) miles from the Work Location at which Executive was based immediately prior to the Change of Control; (iv) after a Change of Control, the material reduction in the compensation and benefits provided to Executive under the employee benefit plans, programs, and practices in effect immediately prior to the Change of Control; (v) after a Change of Control, the insolvency or the filing by Company of a petition for bankruptcy of Company; or (vi) after a Change of Control, Company's failure promptly to obtain an agreement from any successor or assignee of Company to assume and agree to perform Company's obligations under this Agreement unless that successor or assignee is bound to the performance of this Agreement as a matter of law.

**1.14 Disability.** Executive's inability as a result of physical or mental incapacity to substantially perform Executive's duties for Company on a full-time basis, which inability lasts for a period of six (6) consecutive months. The Board (or the Committee, if requested to do so by the Board) will be responsible for determining in good faith an Executive's Disability based on the information received by the Board (or the Committee).

**1.15 Duties.** Duties of the type performed by Executive for Company during the twenty-four (24) month period immediately prior to the Termination Date.

**1.16 Effective Date.** The date on which this Agreement becomes effective as set forth on the Signature Page.

**1.17 Equity Awards.** Stock options, restricted stock, restricted stock units, and other equity awards that may be granted under the Stock Incentive Plan.

**1.18 Executive.** As defined in the Preamble to this Agreement.

**1.19 Incumbent Directors.** The Persons who, at the Effective Date, constitute the Board, and any Person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of Company in which that Person is named as a nominee for director, without written objection to that nomination); provided, however, that no individual initially elected or nominated as a director of Company as a result of an actual or threatened election contest (as described in Rule 14a-11 under the United States' Securities Act of 1934) or other actual or threatened solicitation of proxies or consents by or on behalf of any "person" (as defined in Section 3(a)(9) of the Act and as used in Section 13(d)(3) and 14(d)(2) of the Act) other than the Board, including by reason of any agreement intended to avoid or settle any such contest or solicitation, will be deemed an Incumbent Director; and provided further, that subject to the provisions of this Section 1.19, no Person will be deemed to be an Incumbent Director until that time as they take office as a director of Company.

**1.20 Invention.** Any idea, invention, discovery, improvement, innovation, design, process, method, formula, technique, machine, article of manufacture, composition of matter, algorithm, or computer program, and any improvements to any of the above.

**1.21 Parties.** Executive and Company.

**1.22 Performance-related Bonus.** Executive's performance-related annual cash bonus, calculated in a manner consistent with the terms of Company's performance-related bonus plan and this Agreement.

**1.23 Person.** A natural person, or a corporation, partnership, limited partnership, joint venture, limited liability company, trust, other business, non-business, charitable, or governmental entity, or governmental agency.

1.24 **Recoupment Policy.** A policy of recoupment of compensation adopted or amended from time to time by the Board or the Committee as it deems necessary or desirable to comply with the requirements of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (providing for recovery of erroneously awarded compensation), Section 304 of the Sarbanes-Oxley Act of 2002 (providing for forfeiture of certain bonuses and profits), and any implementing rules and regulations of the U.S. Securities and Exchange Commission and applicable listing standards of a national securities exchange adopted in accordance with either of those Acts, which policy is incorporated into this Agreement by this reference.

1.25 **Release.** A release of Company from any and all liabilities and claims of any kind substantially in the form attached as Schedule D to this Agreement, revised as necessary at the time of execution to comply with applicable law.

1.26 **Restriction Period.** That period beginning on the Termination Date and ending on the later of (i) the date that is the twelve (12) month anniversary of the Termination Date or (ii) if severance payments become due to the Executive pursuant to Section 4.1, the date on which the last of those severance payments is due.

1.27 **Section 409A.** Section 409A of the Code.

1.28 **Stock Incentive Plan.** The Manhattan Associates, Inc. 2007 Stock Incentive Plan, as amended, or any successor plan to that plan.

1.29 **Subject Invention.** Any Invention that is conceived by Executive during the term of their employment with Company solely or jointly with others and: (i) relates to the actual or anticipated business, research, or development of Company; (ii) results from any work performed by Executive using any equipment, facilities, materials, Confidential Information, or Company personnel; or (iii) is suggested by or results from any task assigned to Executive by, or performed by Executive for or on behalf of, Company.

1.30 **Termination Date.** The date on which Executive's employment with Company is terminated with or without Cause, for any reason or for no reason, upon the initiative of either Party.

1.31 **Work.** Any copyrightable work of authorship, including, without limitation, computer programs (including the contents of read-only memories), any technical descriptions for products, user's guides, graphical works, audiovisual works, sound recordings, literary works, illustrations, advertising materials, and any contribution to those materials.

1.32 **Work Location.** Executive's primary place of business as set forth on Schedule B, as may be changed by Company from time to time at the discretion of the Executive's direct supervisor or the Board.

## 2. Employment.

2.1 **Position and Responsibilities.** As of the Effective Date, Company will continue to employ Executive, and Executive accepts continuing employment by Company, at the position set forth on Schedule B, and Executive will continue to report to the direct supervisor set forth on Schedule B, all in accordance with and subject to the terms set forth in this Agreement. Executive will perform those responsibilities consistent with their position and those other duties as may be and previously have been determined from time to time by Company's CEO, Executive's direct supervisor (if different from the CEO), or the Board from time to time, and perform those responsibilities to the best of their ability while devoting their full business time to those responsibilities. Executive will act in good faith to promote the interests of Company. Executive may participate in those civic and charitable activities as Executive elects that do not meaningfully interfere with their duties for Company. Executive will conduct themselves in a business-like and professional manner as appropriate for their position and represent Company in a manner that complies with good business and ethical practices. Executive will be subject to and abide by the written policies and procedures of Company applicable to executive personnel of Company, as adopted from time to time by Company and communicated to Executive.

2.2 **Executive's Work Location.** Executive will work out of their Work Location set forth on Schedule B, which Work Location may be changed by Company from time to time at the discretion of Executive's direct supervisor or the Board.

3. **Compensation.** During the term of Executive's employment with Company, the following compensation provisions will apply:

3.1 **Base Salary.** Company will pay to Executive the Base Salary, subject to all payroll and income tax withholdings and other authorized deductions, which Base Salary may be increased annually at the discretion of the Board or the Committee.

3.2 **Performance-Related Bonus.** Executive will be eligible to receive the Performance-related Bonus with a target opportunity equal to the Bonus Target Amount, subject to those terms and conditions as may be established by Company. The Board or the Committee will determine the amount of the bonus, in its reasonable discretion, utilizing financial information reviewed or audited by Company's independent auditors. Company will pay the bonus in accordance with its policies in place from time to time, and the bonus will be subject to all payroll and income tax withholdings and other authorized deductions.

3.3 **Equity Awards.** Executive will be eligible to receive grants of Equity Awards. The grants will have an annual value that reflects Executive's position, duties, and responsibilities with Company and will be commensurate with grants to other executive officers of Company. The grants may be performance-based, service-based, or any combination of them. The Board or the Committee will determine, in its discretion, the form, vesting, forfeiture, and other terms and conditions of the grants. Each grant of an Equity Award will be subject to the terms and conditions of the award agreement for that grant.

**3.4 Employee Benefits.** Executive will be eligible to participate in all employee benefit plans that Company provides for its employees at the executive level, including 401(k), deferred compensation, health care, life insurance, disability, and similar benefit plans. Concurrently with the execution by the Parties of this Agreement, the Parties will enter into an Indemnification Agreement, prepared by or at the direction of Company, under which Company will indemnify Executive to the full extent permitted by law and under Company's Articles of Incorporation and Bylaws for and with respect to any claim, loss, or cause of action resulting from, arising out of, or in connection with Executive's service as an officer, director, or employee of Company or any of its subsidiaries. Company will ensure that Executive is covered under a directors and officers liability insurance policy in the same manner as other executive officers and directors of Company.

**3.5 Expenses.** Executive will be promptly reimbursed for expenses reasonably incurred in the performance of their executive duties in accordance with the written policies of Company in effect from time to time.

**3.6 Vacation.** Except as otherwise set forth on Schedule B or agreed to between the Parties in writing, Executive will be eligible for vacation each calendar year in accordance with the standard Company vacation policy.

**3.7 Recoupment of Compensation.** Performance-related Bonuses, other incentive compensation, and Equity Awards paid or granted to Executive, whether pursuant to this Agreement or otherwise, will be subject to those terms and conditions of any applicable Recoupment Policy.

#### **4. Termination of Employment.**

**4.1 Termination.** Executive's employment under the terms of this Agreement will continue until it is terminated in writing by the Parties, or until Executive's employment is terminated in accordance with the terms of this Agreement. Either Company or Executive may terminate Executive's employment at any time by written notice to the other, which, if given by Executive, will be given at least thirty (30) days prior to the Termination Date designated by Executive. If Executive's employment is terminated (i) by Company for Cause, (ii) as a result of Executive's Disability, or (iii) upon and as a result of Executive's death, or if Executive terminates his employment other than for Constructive Termination, then Company's obligations under this Agreement will cease as of the Termination Date; provided, however, that Executive (or their estate) will be entitled to (a) salary earned through the Termination Date, (b) any bonuses or other incentive compensation earned and payable under the terms of the applicable bonus or other incentive plan as of the Termination Date, (c) benefits earned by or payable to Executive pursuant to the terms of any health, life insurance, disability, welfare, retirement, or other plan or program maintained by Company in which Executive participates or the terms of any Equity Award. If Company terminates Executive's employment other

than pursuant to clauses (i) through (iii) of this Section 4.1, or if Executive terminates their employment as a Constructive Termination, Executive will be entitled to receive the severance payments provided in Section 4.2 (subject to the conditions set forth in Section 4.2). Except as otherwise provided in this Agreement, if Executive's employment is terminated and they are entitled to severance payments under this Section 4.1, then they will not be required to mitigate damages by seeking other employment, and any compensation or benefits they receive will not reduce the amount payable by Company under this Agreement. The severance payments provided pursuant to Section 4.2 will be the only severance benefits payable to Executive by Company as a result of the termination of Executive's employment, and Executive waives their rights (if any) to any severance benefits under any other plan or program of Company.

**4.2 Severance Payments.** Subject to the conditions set forth in the following sentence and the limitations set forth in the last sentence of this paragraph and in Section 4.5, if Executive's employment is terminated under Section 4.1 entitling Executive to receive severance payments, then the severance payments will comprise the following payments, subject to withholding of all applicable payroll and income taxes and other authorized deductions: (i) twelve (12) full months of Executive's Base Salary, payable in twenty-four (24) equal semimonthly installments on Company's regular payroll dates beginning on the first payroll date after the Release is executed and delivered to Company by Executive and becomes effective, (ii) twelve (12) monthly payments each of which is equal to the monthly costs of COBRA coverage for medical and dental coverage for Executive and their dependents (plus a tax gross-up on such COBRA payments) and the right to elect to participate in Company's medical and dental coverages for that twelve (12) month period, and (iii) if that termination of Executive's employment occurs on or within twenty-four (24) months following the date of a Change of Control, (a) a pro rata bonus for the year of termination (based on the number of days that have elapsed to the Termination Date), calculated at target performance level, less any bonus amount already paid or payable for that year, and (b) an additional annual bonus amount equal to the greater of Executive's target bonus for the year of termination or Executive's target bonus for the prior year, which bonus payments ((a) and (b) above) will be paid as a lump sum on the sixtieth (60<sup>th</sup>) day after the Termination Date. Company's obligation to make the severance payments under this Section 4.2 is subject to the conditions that (a) Executive executes and delivers to Company the Release within the time period specified in the Release, and the Release becomes effective, and (b) Executive complies with the restrictive covenants and post-termination obligations in Sections 8 through 11, inclusive. If Executive dies after becoming entitled to severance payments under this Section 4.2, the severance payments under this Section 4.2 will continue for the lesser of six (6) months or the remainder of the twelve (12) month period referred to above.

**4.3 Treatment of Unvested Equity Awards.** Except as otherwise agreed in writing between Company (or its successor) and Executive, if a Change of Control occurs, any outstanding Equity Awards granted to Executive not yet vested as of that Change of Control will remain in effect in accordance with their terms (or Company may, without Executive's consent, substitute for those unvested Equity Awards an equity award with substantially equivalent value, terms, and conditions of the survivor, continuing, successor, or purchasing entity, or their parent). If on or within twenty-four (24) months following the date of a Change of Control Executive's employment is terminated under Section 4.1 entitling Executive to receive severance payments, then any outstanding unvested Equity Awards granted to Executive prior to that Change of Control (or any equity awards substituted for those Equity Awards) will fully vest (to the extent they have not otherwise vested) as of the date that the Release becomes effective. If any performance period for an outstanding unvested Equity Award has not been completed as of the date of a Change of Control, then the target performance level for that Equity Award will be deemed to have been achieved as of the date of that Change of Control.

The provisions of this Section 4.3 are, by this Agreement, deemed to be a part of, and where necessary, amend, each Equity Award agreement of Executive and to supersede any contrary provisions in each of those agreements.

**4.4 Section 409A Compliance.** This Agreement will at all times be interpreted and performed in accordance with the requirements of Section 409A. The severance payments under Section 4.2 will be deemed separate payments for purposes of Section 409A, and those payments are in whole or in part intended to satisfy the "short-term deferral exception" and the "two-times pay" exception to Section 409A. Notwithstanding any provision of this Agreement to the contrary, the timing of Executive's execution of the Release will not, directly or indirectly, result in Executive designating the calendar year of payment, and if a payment that is subject to execution of the Release could be made in more than one taxable year, that payment will be made in the later taxable year. Any action that may be taken (and, to the extent possible, any action actually taken) by Company will not be taken (or will be void and without effect) if that action violates the requirements of Section 409A. Any provision in this Agreement that is determined to violate the requirements of Section 409A will be void and without effect. In addition, any provision that is required to appear in this Agreement in accordance with Section 409A that is not expressly set forth in this Agreement will be deemed to be set forth in this Agreement, and this Agreement will be administered in all respects as if that provision were expressly set forth. Company will have the authority to delay the commencement of all or a part of the payments to Executive under Section 4 if Executive is a "key employee" of Company (as determined by Company in accordance with procedures established by Company that are consistent with Section 409A) to a date that is six (6) months and one (1) day after the Termination Date (and on that date the payments that otherwise would have been made during that six (6) month period will be made), but only to the extent that delay is required under the provisions of Section 409A to avoid imposition of additional income and other taxes, provided that Company and Executive agree to take into account any transitional rules and exemption rules available under Section 409A.

**4.5 Limitations on Severance Payments.** Except as otherwise provided below, if it is determined that any right, payment, or other benefit under this Agreement to or for the benefit of Executive would result in Company's payment of a "parachute payment" under Code Section 280G, in whole or part when aggregated with any other right, payment, or benefit to or for the Executive under all other agreements or benefit plans of Company, then, to the extent necessary to make those payments or benefits not "parachute payments" (but only to such extent and after taking into account any reduction relating to Section 280G under any other plan, arrangement or agreement), any right, payment, or benefit under this Agreement will not become payable. The determination under this Section 4.5 will be made by a nationally recognized accounting firm selected by Company. All determinations required to be made under this Section 4.5, including whether and which of the rights, payments, or benefits are required to be reduced, the amount of that reduction, and the assumptions to be utilized in arriving at that determination, will be made by that accounting firm.

**5. Inventions.** By this Agreement, Executive irrevocably assigns to Company all of Executive's rights to all Subject Inventions in the United States and all other countries and the right to claim priority in the Subject Inventions.

**6. Patent Applications and Maintenance.** If Company elects to file one or more patent applications, either in the United States or in any foreign country, on a Subject Invention of which Executive is an inventor, Executive will sign all necessary documentation relating to the patent application(s), including formal assignments to Company, and will cooperate with attorneys or other Persons designated by Company to provide all information necessary for the prosecution of the patent application(s) in the United States and any foreign country. Executive also will assist Company in every proper way to maintain its patents during and following the period of employment, including, but not limited to, the performance of all lawful acts, such as the giving of testimony in any interference proceedings, infringement suits, or other litigation, as may be deemed necessary or advisable by Company.

## 7. Copyrights.

**7.1 Ownership by Company.** Any Works created by Executive in the course of Executive's duties as an employee of Company are subject to the "Work for Hire" provisions contained in Sections 101 and 201 of the United States Copyright Law, Title 17 of the United States Code. All right, title, and interest in and to copyrights in all Works that have been or will be prepared by Executive within the scope of Executive's employment with Company will be the property of Company. To the extent the provisions of Title 17 of the United States Code do not vest the copyrights to any Works in Company, Executive, by this Agreement, assigns to Company all right, title, and interest to copyrights Executive may have in the Works.

**7.2 Assistance to Company.** Executive will assist Company in every proper way to maintain Company's copyrights during and following Executive's period of employment including, but not limited to, the performance of all lawful acts, such as the giving of testimony in any infringement suits or other litigation, as may be deemed necessary or advisable by Company.

**8. Agreement Not to Solicit Customers.** During the term of Executive's employment by Company, Executive will not, either directly or indirectly, on Executive's behalf or on behalf of another Person, for the purpose of selling or providing any Competing Business, solicit, divert, or appropriate, or attempt to solicit, divert, or appropriate, any Company customer or prospective customer. Further, during the Restriction Period, Executive will not, either directly or indirectly, on Executive's behalf or on behalf of another Person, for the purpose of selling or providing any Competing Business, solicit, divert, or appropriate, or attempt to solicit, divert, or appropriate, any Company customer or potential customer: (i) with which Executive deals or has dealt on behalf of Company (ii) whose dealings with Company are or were coordinated or supervised by Executive; (iii) about which Executive obtains or obtained confidential information in the ordinary course of business as a result of Executive's association with Company; or (iv) that receives or received products or services authorized by Company, the sale or provision of which results or resulted in compensation, commissions, or earnings for Executive within twenty-four (24) months prior to the Termination Date.

**9. Agreement Not to Solicit Employees.** During the term of Executive's employment by Company and the Restriction Period, Executive will not, either directly or indirectly, on Executive's behalf or on behalf of another Person, solicit, divert, or hire away, or attempt to solicit, divert, or hire away, any Company employee.

**10. Non-Competition.** During Executive's employment by Company, Executive will not work for any other Person (other than volunteering free time to a charitable organization), or engage in any other business activity that would interfere with the performance of Executive's job responsibilities or that is in violation of policies established from time to time by Company, without Company's prior written consent. During Executive's employment by Company, any money or other remuneration received by Executive for services rendered to a Company customer belong to Company. Executive acknowledges that: (i) Company is engaged in the Company Business throughout the United States of America and internationally, with its principal place of business in Atlanta, Georgia, international offices in Europe and Asia, and customers throughout the United States of America and in multiple foreign countries; (ii) Executive possesses selective and specialized skills, knowledge, learning, and abilities relating to the Company Business, and Executive's employment with Company involves further acquisition and development of such selective and specialized skills, knowledge, learning, and abilities; and (iii) Executive has and will have, during Executive's employment with Company, access to Confidential Information. In light of the above, during the Restriction Period, Executive will not, without Company's prior written consent, perform in the United States of America, Europe, Asia, or any other geographic location in which Company is engaged in the Company Business, any Duties for, or that benefit, directly or indirectly, any Competing Business engaged in by a company listed or described on Schedule C to this Agreement.

## 11. Confidential Information.

**11.1 Non-disclosure and Non-use.** Except as reasonably necessary or appropriate in connection with Executive's performance of Executive's responsibilities for Company, Executive will not disclose Confidential Information to any Person or use or exploit (including reverse engineering, decompiling, or disassembling) Confidential Information.

**11.2 Exceptions.** Notwithstanding the foregoing, the non-disclosure restriction of Section 11.1 will not apply to any data or information: (i) that has been voluntarily disclosed to the public by Company, except where that disclosure has been made by Executive without authorization from Company; (ii) that has been independently developed and disclosed by others; or (iii) that otherwise has entered the public domain through lawful means.

**11.3 Duration.** Except as otherwise provided in this Section 11, the covenants of confidentiality, non-use, and non-exploitation set forth in this Section 11 will continue throughout the term of Executive's employment with Company, and indefinitely following the Termination Date; provided that Executive's non-disclosure obligations with respect to Confidential Information will terminate at such time as the data or information is no longer confidential.

**11.4 Notice Requirement.** Executive agrees to notify Company immediately if Executive learns of any unauthorized disclosure, use, or exploitation of Confidential Information by another Person.

12. **Return of Property.** Upon termination of Executive's employment with Company, Executive promptly will deliver to Company all Company property in their possession or control, including, but not limited to, all keys, credit cards, security cards, computers, computer software (including computer discs and storage devices of any kind), mobile phones, and other equipment or personal items provided by Company to Executive for use during Executive's employment, together with all Company documents and all copies of those documents (both hard copy and electronically stored), written or recorded materials, plans, records, notes, files, drawings, or papers relating to the affairs of Company, including all notes or records relating to employees of Company.

13. **Obligations to Others.** Except as may have been disclosed previously by Executive to Company, Executive represents and warrants that Executive is not or was not a party to any agreement with any other Person that purports to require Executive to assign any Work or any Invention created, conceived, or first practiced by Executive during any period of time during which Executive has been or will continue to be an employee of Company, nor is Executive subject to any law, court order, or regulation that purports to require that assignment. Further, Executive represents and warrants that Executive is not presently under any agreement that will prevent Executive from performing Executive's duties for Company, and is not in breach of any agreement with respect to any confidential information, including trade secrets, owned by any other Person. Executive will not disclose to Company any protected confidential information, including trade secrets, of any other Person.

14. **Remedies.** Executive acknowledges that the covenants contained in Sections 5 through 13, inclusive, of this Agreement are of the essence of this Agreement, that each of those covenants is reasonable and necessary to protect the business, interests, and properties of Company, and that Company will suffer irreparable loss and damage if Executive breaches any of those covenants. Therefore, in addition to all other remedies provided by law, Company will be entitled to seek equitable relief in connection with any breach or contemplated breach of any of those covenants referred to above. With respect to misappropriation of a "trade secret" as that term is defined under applicable law, Company's remedies under this Agreement will be in addition to all other remedies provided by law or in equity. The existence of any claim that Executive may have against Company will not constitute a defense to the enforcement by Company of the covenants contained in this Agreement. Executive acknowledges that Executive's breach of this Agreement may result in an immediate termination of Executive's employment.

15. **Notices.** A Party providing notice under this Agreement will provide that notice to the other Party in writing, addressed to the other Party at its address set forth on the Signature Page to this Agreement. Notices to Company will be addressed to the attention of the Chief Executive Officer; *provided, however*, that if Executive is the Chief Executive Officer, notices will be

addressed to the attention of the Chairman of the Board. A notice provided under this Agreement will be deemed given upon receipt, if hand delivered in person or delivered by courier, or three (3) days after deposit in the U.S. mail, postage prepaid. Either Party may change its address for receipt of notices by providing notice in accordance with this Section 15.

## 16. Miscellaneous.

16.1 **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Georgia without reference to its conflict of laws rules.

16.2 **Dispute Resolution.** Exclusive venue for any dispute arising under or in connection with this Agreement will be in the Federal District Court for the Northern District of Georgia or the Superior Court of Fulton County, Georgia. By this Agreement, each Party expressly agrees that those courts will have personal jurisdiction and venue with respect to that Party, and each Party submits to the personal jurisdiction and venue of those courts and waives any objection based on inconvenient forum.

16.3 **Entire Agreement.** This Agreement constitutes the final, full, and exclusive expression of the Parties' agreement with respect to: (i) Executive's position, responsibilities, and at-will status, compensation, prospective termination of employment, and severance, (ii) Inventions, (iii) Works, (iv) customer non-solicitation, (v) employee non-solicitation, (vi) non-competition, (vii) Confidential Information, (viii) and agreements between Executive and Persons other than Company, and this Agreement supersedes all prior agreements, understandings, writings, proposals, representations, and communications, oral or written, with respect to that subject matter, including any prior Executive Employment Agreement, Severance and Non-Competition Agreement, or similar agreement between the Parties; provided, however, that any such prior Executive Employment Agreement or Non-Competition Agreement, or similar prior agreement, letter, or other document, will remain in effect to the limited extent necessary to enable either Party to pursue remedies against the other Party for a breach by the other Party prior to the Effective Date of the terms of that prior agreement, letter, or other document. This Agreement does not supersede Company rules, regulations, and policies, including those contained in Company's employee handbook and other Company documents provided by Company to Executive from time to time, except to the extent inconsistent with this Agreement.

16.4 **Invalidity of Provisions.** The provisions of this Agreement are severable. If for any reason a court finds that any provision in this Agreement is unenforceable in whole or in part, including if a court finds that a restrictive covenant set forth in any of Sections 8 through 11, inclusive, does not comply with applicable law in terms of the geographic area, duration, or scope of the covenant, then the court will modify that provision to the extent necessary to render the provision enforceable while, to the extent possible, preserving the original intent of the Parties, and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

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**16.5 Amendments; Waiver.** This Agreement may be amended or modified, in whole or in part, only by a written amendment signed by Executive and, on behalf of Company, by an officer of Company acting with specific authorization and approval of the Board or the Committee, and no term of this Agreement may be waived except in a written waiver signed by the Party waiving the benefit of that term (and in the case of Company, with the specific authorization of the Board or the Committee). No failure on the part of either Party to exercise any right will operate as a continuing waiver of that right or a waiver of that Party's right to exercise the same, a similar, or any other right in the future.

**16.6 Assignment; Binding Effect.** Neither Party has the right to assign its rights or delegate its duties under this Agreement; provided, however, that Company has the right to assign its rights and delegate its duties under this Agreement to a Person or Persons that purchase all or substantially all of the assets or stock of Company. Any attempt to assign or delegate in violation of the foregoing restrictions will be null and void. This Agreement will binding upon, inure to the benefit of, and be enforceable by the Parties and their respective heirs, legal representatives, successors, and permitted assignees.

**16.7 Headings; Personal Pronouns.** The section headings in this Agreement are for reference purposes only and are not intended in any way to describe, interpret, define, or limit the extent or intent of all or any portion of this Agreement. Plural personal pronouns such as "they" and "their" sometimes are used in this Agreement as substitutes for singular personal pronouns in order to avoid having to use gender specific personal pronouns such as "he" or "his" or "she" or her."

**16.8 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and both of which together will constitute one and the same instrument.

**16.9 Representation of Authority.** The official executing this Agreement on behalf of Company represents and warrants that they have the requisite authority to do so and fully bind Company.

**16.10 Employee At-Will.** Except to the extent that Executive has a separate written agreement with Company establishing or confirming that Executive is not an at-will employee, Executive is an at-will employee, whose employment with Company may be terminated with or without Cause, for any reason or no reason, by either Party, but subject to any notice requirements and post-termination obligations of the Parties provided for in this Agreement.

**16.11 Legal Fees and Expenses.** Each Party will be responsible for its or their own costs, fees, and expenses, including attorney's fees and expenses, in connection with any dispute arising out of the subject matter of this Agreement; provided, however, that if Executive's employment is terminated after a Change of Control (i) by Company without Cause or (ii) by Executive as a result of a Constructive Termination, Executive will be entitled to recover from Company their reasonable attorneys' fees and expenses incurred in connection with any dispute relating to Executive's enforcement of their rights related to that termination to the extent that Executive prevails in a material manner with respect to that dispute.

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INITIAL SALARIES AND TARGET BONUS OPPORTUNITIES  
FOR NAMED EXECUTIVE OFFICERS

<u>Name</u>	<u>Base Salary</u>	<u>Target Bonus</u>
Eddie Capel	\$475,000	\$475,000
Dennis B. Story	\$ 360,000	\$ 250,000
Jeffrey S. Mitchell	\$ 370,000	\$375,000
Bruce S. Richards	\$ 283,000	\$ 160,000



**FORM OF DIRECTOR AND OFFICER INDEMNIFICATION AGREEMENT**

This Director and Officer Indemnification Agreement (this “**Agreement**”) is entered into as of the “**Effective Date**” set forth below, by and between Manhattan Associates, Inc., a Georgia corporation (“**Company**”), and the undersigned “**Indemnitee**,” with reference to the following facts:

- A. Indemnitee is a director or an officer of Company and in that capacity is expected to perform, and performs, valuable services for Company.
- B. Company’s Bylaws provide certain indemnification and expense advancement rights in favor of directors of Company.
- C. Company’s Bylaws further provide that Company’s Board of Directors will have the power to cause Company to provide to its officers all or any part of the right to indemnification permitted for officers by appropriate provisions of the Official Code of Georgia Annotated (the “**Statute**”).
- D. Company’s Bylaws further provide that Company will have the power, upon authorization by the Board of Directors, to enter into an agreement or agreements providing to any indemnified person indemnification rights substantially similar to those provided in Company’s Bylaws.
- E. In order to encourage Indemnitee to continue to serve as a director or an officer of Company and to perform other services for Company at its request, Company desires to enter into this Agreement with Indemnitee.

In consideration of Indemnitee’s Service, Company and Indemnitee agree as follows:

- 1. **Contents of Agreement.** This Agreement consists of this Signature Page and attached Schedule A (“General Terms and Conditions”), which is incorporated into this Agreement by reference.
- 2. **Definitions.** Except as otherwise defined in this Agreement, capitalized terms will have the meanings set forth in Section 1 of Schedule A entitled “Definitions.”

**THIS AGREEMENT WILL BECOME EFFECTIVE WHEN SIGNED BY BOTH PARTIES BELOW AND AS OF THE DATE SIGNED BY INDEMNITEE BELOW.**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**INDEMNITEE**

[Name of Indemnitee]  
[Address of Indemnitee]

**COMPANY**

Manhattan Associates, Inc.  
2300 Windy Ridge Parkway, Tenth Floor  
Atlanta, GA 30339

\_\_\_\_\_  
INDEMNITEE SIGNATURE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
NAME PRINTED

\_\_\_\_\_  
NAME & TITLE PRINTED

\_\_\_\_\_  
EFFECTIVE DATE

\_\_\_\_\_  
DATE

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## SCHEDULE A GENERAL TERMS AND CONDITIONS

1. **Definitions.** Except as otherwise specified in this Agreement, the definitions of the capitalized terms set forth in this Section 1 will apply with respect to the entire Agreement.

1.1 **Agreement.** This Director and Officer Indemnification Agreement.

1.2 **Company.** As defined in the Preamble to this Agreement.

1.3 **Effective Date.** The date on which this Agreement becomes effective as defined on the Signature Page to this Agreement.

1.4 **Indemnitee.** As defined in the Preamble to this Agreement.

1.5 **Loss.** Any obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employment benefit plan), expenses (including attorneys' fees and related disbursements and appeals bonds), and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with a Proceeding. For the avoidance of doubt, Losses include, without limitation, monetary damages against Indemnitee in respect of a breach or an alleged breach of fiduciary duties. In addition, Losses include expenses incurred in a Proceeding brought by Indemnitee, and in which Indemnitee prevails, to enforce or interpret this Agreement or to enforce any other right to indemnification or expense advancement.

1.6 **Parties.** Indemnitee and Company.

1.7 **Person.** A natural person, or a corporation, partnership, limited partnership, joint venture, limited liability company, trust, other business, non-business, charitable, or governmental entity, or governmental agency.

1.8 **Proceeding.** Any threatened, pending, or completed action, suit, claim, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, including any such action, suit, claim, or proceeding brought by or in the right of Company; and the investigation, preparation, prosecution, defense, settlement, arbitration, and appeal of, and the giving of testimony in, any of the foregoing.

1.9 **Service.** Indemnitee's past, present, or future service as a director and/or officer of Company, or Indemnitee's service at the request of Company as a director, officer, employee, agent, or consultant (which, for purposes of the Agreement, will include a trustee, partner, or manager or similar office) of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, or by reason of any action taken or omitted or alleged to have been taken or omitted in that capacity. For purposes of this Section 1.9, (i) Indemnitee will be considered to be serving under an employee benefit plan at the request of Company if their duties to Company also impose duties on, or otherwise involve services by, them to the plan or to participants in or beneficiaries of the plan; and (ii) Indemnitee will be deemed to be serving at the request of Company as a director, officer, employee, agent, or consultant of another corporation, partnership, joint venture, trust, or other enterprise if that other entity is a subsidiary or affiliate of Company and Indemnitee is elected as a director or officer of that other entity or is employed or engaged by that entity.

1.10 **Statute.** As defined on the Signature Page to this Agreement.

2. **Indemnification of Indemnitee.** Company will indemnify, defend and hold harmless Indemnitee to the full extent permitted by the provisions of the Statute, as currently in effect or as it may later be amended, or by the provisions of any other statute authorizing or permitting that indemnification, whether currently in effect or later adopted.

3. **Additional Indemnity.** Subject to Section 4, Company will indemnify, defend, and hold harmless, Indemnitee against any Losses if Indemnitee was, is, or is threatened to be made a named defendant or respondent in any Proceeding by reason of Indemnitee's Service.

4. **Limitations on Additional Indemnity.** The following limitations will apply with respect to the indemnity provided for in Section 3.

4.1 **Limitation Related to Certain Court Judgments or Injunctions.** No indemnity pursuant to Section 3 will be paid by Company to the extent of any Losses incurred in a Proceeding in which Indemnitee is adjudged liable to Company, in a final nonappealable decision, or is subjected to final nonappealable injunctive relief in favor of Company:

(i) for any appropriation, in violation of their duties, of any business opportunity of Company;

(ii) for acts or omissions that involve intentional misconduct or a knowing violation of law;

(iii) for the types of liability set forth in Section 14-2-832 of the Statute; or

(iv) for any transaction from which Indemnitee received any improper personal benefit.

4.2 **Additional Limitations.** Company will not be obligated to indemnify, or advance expenses to, Indemnitee with respect to:

(i) any Proceeding initiated by Indemnitee (except with respect to a Proceeding brought to enforce or interpret this Agreement or to enforce any other right to indemnification or expense advancement as set forth below), unless that Proceeding was authorized or consented to by the Board of Directors.

(ii) any Proceeding instituted by Indemnitee to enforce or interpret this Agreement or to enforce any other right to indemnification or expense advancement, unless Indemnitee is successful in that Proceeding, or unless and to the extent that the court in that Proceeding determines that, despite Indemnitee's failure to establish their right to indemnification, Indemnitee is entitled to indemnity for those expenses in view of all of the relevant circumstances; *provided, however*, that nothing in this Section 4.2(ii) is intended to limit Company's obligation with respect to the advancement of expenses to Indemnitee in connection with any such Proceeding instituted by Indemnitee to enforce or interpret this Agreement or enforce any other right to indemnification or expense advancement, as provided in Section 6;

(iii) any Proceeding with respect to which final judgment is rendered against Indemnitee for payment or an accounting of profits arising from the purchase or sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

(iv) any Proceeding involving the enforcement of non-competition, non-solicitation, non-disparagement, or non-disclosure agreements or similar provisions of employment, consulting, or similar agreements the Indemnitee may be a party to with Company, any subsidiary or affiliate of Company, or any other applicable foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, if any.

## 5. Notification and Defense of Claim.

**5.1 Notification.** Promptly after receipt by Indemnitee of notice of the commencement of any Proceeding, if a claim with respect to that Proceeding is to be made by Indemnitee against Company under this Agreement, Indemnitee will notify Company of the commencement of the Proceeding, but the failure to so notify Company will not relieve Company from any liability that it may have to Indemnitee otherwise under this Agreement. With respect to any such Proceeding as to which Indemnitee so notifies Company:

(i) Company will be entitled to participate in the Proceeding at its own expense; and

(ii) except as otherwise provided below, to the extent that it may desire, Company may assume the defense of the Proceeding.

**5.2 Company Acknowledgment.** Promptly after receipt by Company of notice of the commencement of any Proceeding, and no later than thirty (30) days following that receipt, Company will acknowledge in writing to Indemnitee its obligations to indemnify Indemnitee and advance expenses with respect to that Proceeding and otherwise confirm its obligations under this Agreement with respect to that Proceeding. If Company fails to acknowledge in writing its obligations within that thirty (30) day period, it will be conclusively presumed that Company has acknowledged that it is obligated to indemnify Indemnitee and advance expenses with respect to that Proceeding, and Company will not, and will be precluded and estopped from, denying or seeking to avoid those obligations in that Proceeding, and, by this Agreement, Company releases Indemnitee from any claim or action to avoid those obligations under those circumstances.

If Company denies or otherwise fails to honor its obligations under this Agreement, Indemnitee may enforce this Agreement in any court of competent jurisdiction. Company will have the burden of proving that Indemnitee is not entitled to indemnification or expense advancement under those circumstances.

**5.3 Payment of Certain Legal Expenses.** After notice from Company to Indemnitee of its election to assume the defense of a Proceeding, Company will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by Indemnitee in connection with that defense other than reasonable costs of investigation or as otherwise provided below. Indemnitee will have the right to employ counsel of their choosing in that Proceeding, but the fees and expenses of that counsel incurred after notice from Company of its assumption of the defense will be at the Indemnitee's expense unless (i) the employment of counsel by Indemnitee has been authorized in writing by Company, (ii) Company and Indemnitee reasonably conclude that there may be a conflict of interest between Company and Indemnitee in the conduct of the defense; or (iii) Company will not in fact have employed counsel to assume the defense, in each of which case the Company will pay the reasonable fees and expenses of Indemnitee's counsel. In addition, without the written consent of Indemnitee, Company will not be entitled to assume the defense of any claim brought by or in the right of Company.

**5.4 Settlements.** Company will not be liable to Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding without its prior written consent, unless it is determined that Company wrongly refused to indemnify Indemnitee or advance expenses with respect to that Proceeding. Company will not settle any such Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's prior written consent. Neither Company nor Indemnitee unreasonably will withhold its or their consent to any proposed settlement.

**6. Prepayment of Expenses.** Unless Indemnitee otherwise elects, expenses incurred in defending any Proceeding, including expenses in pursuing appeals and expenses incurred by Indemnitee in enforcing any right to indemnification or expense advancement under this Agreement or otherwise, will be paid by Company, promptly upon demand by Indemnitee, in advance of the final disposition of that Proceeding upon receipt by Company of a written affirmation of Indemnitee's good faith belief that their conduct does not constitute behavior of the kind described in Section 4 of this Agreement and a written undertaking by Indemnitee, executed personally or on their behalf, to repay any advances if it is finally determined that they are not entitled to be indemnified by Company under this Agreement. That undertaking will be accepted without reference to the financial ability of Indemnitee to make that repayment. Advances will be unsecured and interest-free. At Indemnitee's election, Company will pay those expenses directly to the professionals, service providers, or other persons from which they were incurred and not to Indemnitee as reimbursement for payments made by Indemnitee to those persons. In any case, any such payment is, and will be deemed to be, a payment in the ordinary course of business pursuant to the preexisting terms of this Agreement, which Agreement terms and payments are a necessary and appropriate commitment and expense of Company in order to secure the services of Indemnitee.

7. **Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this Agreement is held by a court of competent jurisdiction to be unavailable to Indemnitee in whole or in part, in that case, Company will, to the fullest extent permitted by law, contribute to the payment of Indemnitee's Losses with respect to any Proceeding brought against Indemnitee by reason of Indemnitee's Service in an amount that is just and equitable under the circumstances, taking into account, among other things, contributions by other directors and officers of Company or others pursuant to indemnification agreements or otherwise; *provided, that*, without limiting the generality of the foregoing, that contribution will not be required where that holding by the court is due to any limitation on indemnification set forth in Section 4.

8. **Continuation of Indemnity.** All agreements and obligations of Company contained in this Agreement will continue during the period in which Indemnitee is a director or officer of Company and subsequently so long as Indemnitee is subject to any Proceeding by reason of Indemnitee's Service.

9. **Reliance; Enforcement.** Company has entered into this Agreement in order to induce Indemnitee to serve or to continue to serve as a director or officer of Company and acknowledges that Indemnitee is relying upon this Agreement in continuing in such capacity. Company agrees that its obligations set forth in this Agreement are unique and special, and that failure of Company to comply with the provisions of this Agreement will cause irreparable and irremediable injury to Indemnitee, for which a remedy at law will be inadequate. As a result, in addition to any other right or remedy Indemnitee may have at law or in equity with respect to breach of this Agreement, Indemnitee will be entitled to injunctive or mandatory relief directing specific performance by Company of its obligations under this Agreement.

#### 10. Miscellaneous.

10.1 **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without reference to its conflict of laws rules.

10.2 **Dispute Resolution.** Exclusive venue for any dispute arising under or in connection with this Agreement will be in the Federal District Court for the Northern District of Georgia or the Superior Court of Fulton County, Georgia. By this Agreement, each Party expressly agrees that those courts will have personal jurisdiction and venue with respect to that Party, and each Party submits to the personal jurisdiction and venue of those courts and waives any objection based on inconvenient forum.

10.3 **Nonexclusivity; Supersession of Prior Indemnification Agreement.** The provisions for indemnification and advancement of expenses set forth in this Agreement will not be deemed exclusive of any other rights that Indemnitee may have under or pursuant to any provision of law, Company's Articles of Incorporation or Bylaws, any insurance policy of Company or its subsidiaries or affiliates, in any court in which a Proceeding is brought, the vote of the Corporation's shareholders or disinterested directors, other agreements, or otherwise. However, no amendment or alteration of the Corporation's Articles of Incorporation or Bylaws or any other agreement will adversely affect the rights provided to Indemnitee under this Agreement. This Agreement supersedes any prior indemnification agreement between Indemnitee and Company.

10.4 **Invalidity of Provisions.** The provisions of this Agreement are severable. If for any reason a court finds that any provision in this Agreement is unenforceable in whole or in part, then the court will modify that provision to the extent necessary to render the provision enforceable while, to the extent possible, preserving the original intent of the Parties, and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

10.5 **Amendments; Waiver.** This Agreement may be amended or modified, in whole or in part, only by a written amendment signed by Indemnitee and, on behalf of Company, by an officer of Company acting with specific authorization and approval of the Company's Board of Directors or the Board's Compensation Committee, and no term of this Agreement may be waived except in a written waiver signed by the Party waiving the benefit of that term (and in the case of Company, with the specific authorization of the Board or the Committee). No failure on the part of either Party to exercise any right will operate as a continuing waiver of that right or a waiver of that Party's right to exercise the same, a similar, or any other right in the future.

10.6 **Assignment; Binding Effect.** Neither Party has the right to assign its rights or delegate its duties under this Agreement, and any attempted assignment or delegation will be void; provided, however, that Company has the right to assign its rights and delegate its duties under this Agreement to a Person or Persons that purchase all or substantially all of the assets or stock of Company. Any attempt to assign or delegate in violation of the foregoing restrictions will be null and void. This Agreement will binding upon, inure to the benefit of, and be enforceable by the Parties and their respective heirs, legal representatives, successors, and permitted assignees. Company will require and cause any direct or indirect successor (whether by purchase, merger, consolidation, or otherwise) to all or substantially all of the assets or stock of Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that Company would be required to perform if no such succession had taken place.

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10.7 **Headings; Personal Pronouns.** The section headings in this Agreement are for reference purposes only and are not intended in any way to describe, interpret, define, or limit the extent or intent of all or any portion of this Agreement. Plural personal pronouns such as “they” and “their” sometimes are used in this Agreement as substitutes for singular personal pronouns in order to avoid having to use gender specific personal pronouns such as “he” or “his” or “she” or her.”

10.8 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and both of which together will constitute one and the same instrument.

10.9 **Representation of Authority.** The official executing this Agreement on behalf of Company represents and warrants that they have the requisite authority to do so and fully bind Company.

10.10 **No Right to Employment Created.** Nothing in this Agreement is intended to create in Indemnitee any right to employment or continued employment.