

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2012

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-15169

**PERFICIENT, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**No. 74-2853258**

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

**520 Maryville Centre Drive,**

**Suite 400**

**Saint Louis, Missouri 63141**

(Address of principal executive offices)

**(314) 529-3600**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements during the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☒

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

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 29, 2012, there were 33,116,905 shares of Common Stock outstanding.

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## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

**Perficient, Inc.**  
**Condensed Consolidated Balance Sheets**  
**(Unaudited)**

	September 30, 2012	December 31, 2011
	(In thousands, except share information)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 3,481	\$ 9,732
Accounts receivable, net	78,091	60,892
Prepaid expenses	1,564	1,246
Other current assets	3,097	3,118
Total current assets	86,233	74,988
Property and equipment, net	4,526	3,490
Goodwill	160,199	132,038
Intangible assets, net	19,408	10,128
Other non-current assets	3,600	3,288
Total assets	<u>\$ 273,966</u>	<u>\$ 223,932</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 7,538	\$ 5,029
Other current liabilities	20,678	18,483
Total current liabilities	28,216	23,512
Long-term debt	11,500	--
Other non-current liabilities	1,359	1,461
Total liabilities	41,075	24,973
Stockholders' equity:		
Common stock (par value \$.001 per share; 50,000,000 shares authorized and 38,426,203 shares issued and 30,846,332 shares outstanding as of September 30, 2012; 36,217,914 shares issued and 28,742,906 shares outstanding as of December 31, 2011)	\$ 38	\$ 36
Additional paid-in capital	272,232	248,855
Accumulated other comprehensive loss	(270 )	(279 )
Treasury stock, at cost (7,579,871 shares as of September 30, 2012; 7,475,008 shares as of December 31, 2011)	(56,182 )	(54,995 )
Retained earnings	17,073	5,342
Total stockholders' equity	232,891	198,959
Total liabilities and stockholders' equity	<u>\$ 273,966</u>	<u>\$ 223,932</u>

*See accompanying notes to interim unaudited condensed consolidated financial statements.*

**Perficient, Inc.**  
**Condensed Consolidated Statements of Operations**  
(Unaudited)

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
Revenues	<b>(In thousands, except per share data)</b>			
Services	\$ 75,948	\$ 62,486	\$ 214,793	\$ 171,911
Software and hardware	7,450	3,868	17,122	10,618
Reimbursable expenses	4,076	3,820	12,053	9,477
Total revenues	87,474	70,174	243,968	192,006
Cost of revenues (exclusive of depreciation and amortization, shown separately below)				
Project personnel costs	47,843	39,292	136,742	109,024
Software and hardware costs	6,301	3,425	14,554	9,223
Reimbursable expenses	4,076	3,820	12,053	9,477
Other project related expenses	1,027	1,320	2,988	4,454
Total cost of revenues	59,247	47,857	166,337	132,178
Gross margin	28,227	22,317	77,631	59,828
Selling, general and administrative	17,714	13,797	49,065	38,283
Depreciation	612	484	1,590	1,207
Amortization	2,258	1,984	5,664	4,663
Acquisition costs	9	1	1,831	1,231
Adjustment to fair value of contingent consideration	97	334	435	852
Income from operations	7,537	5,717	19,046	13,592
Net interest (expense) income	(93 )	(1 )	(131 )	67
Net other income (expense)	5	13	49	(6 )
Income before income taxes	7,449	5,729	18,964	13,653
Provision for income taxes	2,307	2,263	7,233	5,627
Net income	\$ 5,142	\$ 3,466	\$ 11,731	\$ 8,026
Basic net income per share	\$ 0.17	\$ 0.12	\$ 0.40	\$ 0.29
Diluted net income per share	\$ 0.16	\$ 0.12	\$ 0.38	\$ 0.28
Shares used in computing basic net income per share	30,021	27,744	29,273	27,679
Shares used in computing diluted net income per share	31,674	29,518	30,844	29,054

*See accompanying notes to interim unaudited condensed consolidated financial statements.*

**Perficient, Inc.**  
**Condensed Consolidated Statements of Comprehensive Income**  
**(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
	(In thousands)		(In thousands)	
Net income	\$ 5,142	\$ 3,466	\$ 11,731	\$ 8,026
Other comprehensive income, net of reclassification adjustments:				
Foreign currency translation adjustment	49	(97 )	9	(50 )
Net unrealized loss on investments	--	--	--	(19 )
Comprehensive income	<u>\$ 5,191</u>	<u>\$ 3,369</u>	<u>\$ 11,740</u>	<u>\$ 7,957</u>

*See accompanying notes to interim unaudited condensed consolidated financial statements.*

**Perficient, Inc.**  
**Condensed Consolidated Statement of Stockholders' Equity**  
**Nine Months Ended September 30, 2012**  
**(Unaudited)**  
**(In thousands)**

	<b>Common Stock Shares</b>	<b>Common Stock Amount</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Other Comprehensive Loss</b>	<b>Treasury Stock</b>	<b>Retained Earnings</b>	<b>Total Stockholders' Equity</b>
Balance at December 31, 2011	28,743	\$ 36	\$ 248,855	\$ (279 )	\$ (54,995 )	\$ 5,342	\$ 198,959
Proceeds from the exercise of stock options and sales of stock through the Employee Stock Purchase Plan	32	--	134	--	--	--	134
Net tax benefit from stock option exercises and restricted stock vesting	--	--	678	--	--	--	678
Stock compensation related to restricted stock vesting and retirement savings plan contributions	490	--	6,995	--	--	--	6,995
Purchases of treasury stock and buyback of shares for taxes	(105 )	--	--	--	(1,187 )	--	(1,187 )
Issuance of stock for acquisitions	1,686	2	15,570	--	--	--	15,572
Net income	--	--	--	--	--	11,731	11,731
Foreign currency translation adjustment	--	--	--	9	--	--	9
Balance at September 30, 2012	30,846	\$ 38	\$ 272,232	\$ (270 )	\$ (56,182 )	\$ 17,073	\$ 232,891

*See accompanying notes to interim unaudited condensed consolidated financial statements.*

**Perficient, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**

	Nine Months Ended September 30,	
	2012	2011
	(In thousands)	
<b>OPERATING ACTIVITIES</b>		
Net income	\$ 11,731	\$ 8,026
Adjustments to reconcile net income to net cash provided by operations:		
Depreciation	1,590	1,207
Amortization	5,664	4,663
Deferred income taxes	243	1,251
Non-cash stock compensation and retirement savings plan contributions	6,995	6,760
Tax benefit from stock option exercises and restricted stock vesting	(781 )	(1,554 )
Adjustment to fair value of contingent consideration for purchase of business	435	852
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	(9,161 )	(9,310 )
Other assets	1,510	(2,379 )
Accounts payable	1,768	(2,532 )
Other liabilities	855	(5,111 )
Net cash provided by operating activities	20,849	1,873
<b>INVESTING ACTIVITIES</b>		
Proceeds from maturity of investments	--	13,555
Purchase of property and equipment	(1,391 )	(2,393 )
Capitalization of software developed for internal use	(107 )	(111 )
Purchase of business and related costs	(36,412 )	(19,020 )
Net cash used in investing activities	(37,910 )	(7,969 )
<b>FINANCING ACTIVITIES</b>		
Payment of credit facility financing fees	--	(299 )
Proceeds from line of credit	116,100	14,000
Payments on line of credit	(104,600 )	(14,000 )
Payment of contingent consideration for purchase of business	(425 )	--
Tax benefit on stock option exercises and restricted stock vesting	781	1,554
Proceeds from the exercise of stock options and sales of stock through the Employee Stock Purchase Plan	134	3,605
Purchase of treasury stock	(605 )	(9,525 )
Remittance of taxes withheld as part of a net share settlement of restricted stock vesting	(582 )	--
Net cash provided by (used in) financing activities	10,803	(4,665 )
Effect of exchange rate on cash and cash equivalents	7	13
Change in cash and cash equivalents	(6,251 )	(10,748 )
Cash and cash equivalents at beginning of period	9,732	12,707
Cash and cash equivalents at end of period	\$ 3,481	\$ 1,959
<b>Supplemental disclosures:</b>		
Cash paid for income taxes	\$ 6,071	\$ 5,691
<b>Non-cash activity:</b>		
Stock issued for purchase of business	\$ 15,572	\$ 6,838
Estimated fair value of contingent consideration for purchase of business	\$ 1,474	\$ 2,206

*See accompanying notes to interim unaudited condensed consolidated financial statements.*

**PERFICIENT, INC.**  
**NOTES TO INTERIM UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**SEPTEMBER 30, 2012**

**1. Basis of Presentation**

The accompanying interim unaudited condensed consolidated financial statements of Perficient, Inc. (the “Company”) have been prepared in accordance with accounting principles generally accepted in the United States and are presented in accordance with the rules and regulations of the Securities and Exchange Commission (the “SEC”) applicable to interim financial information. Accordingly, certain footnote disclosures have been condensed or omitted. In the opinion of management, the interim unaudited condensed consolidated financial statements reflect all adjustments (consisting of only normal recurring adjustments) necessary for a fair presentation of the Company’s financial position, results of operations and cash flows for the periods presented. These financial statements should be read in conjunction with the Company’s consolidated financial statements and notes thereto filed with the SEC in the Company’s Annual Report on Form 10-K for the year ended December 31, 2011. Operating results for the three and nine months ended September 30, 2012 may not be indicative of the results for the full fiscal year ending December 31, 2012.

**2. Summary of Significant Accounting Policies**

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates, and such differences could be material to the financial statements.

**Revenue Recognition**

Revenues are primarily derived from professional services provided on a time and materials basis. For time and material contracts, revenues are recognized and billed by multiplying the number of hours expended in the performance of the contract by the established billing rates. For fixed fee projects, revenues are generally recognized using an input method based on the ratio of hours expended to total estimated hours. Amounts invoiced and collected in excess of revenues recognized are classified as deferred revenues. On many projects the Company is also reimbursed for out-of-pocket expenses such as airfare, lodging, and meals. These reimbursements are included as a component of revenues. Revenues from software and hardware sales are generally recorded on a gross basis considering the Company’s role as a principal in the transaction. On rare occasions, the Company enters into a transaction where it is not the principal. In these cases, revenue is recorded on a net basis.

Unbilled revenues represent the project time and expenses that have been incurred, but not yet billed to the client, prior to the end of the fiscal period. For time and materials projects, the client is invoiced for the amount of hours worked multiplied by the billing rates as stated in the contract. For fixed fee arrangements, the client is invoiced according to the agreed-upon schedule detailing the amount and timing of payments in the contract. Clients are typically billed monthly for services provided during that month, but can be billed on a more or less frequent basis as determined by the contract. If the time and expenses are worked/incurred and approved at the end of a fiscal period and the invoice has not yet been sent to the client, the amount is recorded as unbilled revenue once the Company verifies all other revenue recognition criteria have been met.

Revenues are recognized when the following criteria are met: (1) persuasive evidence of the customer arrangement exists; (2) fees are fixed and determinable; (3) delivery and acceptance have occurred; and (4) collectability is deemed probable. The Company’s policy for revenue recognition in instances where multiple deliverables are sold contemporaneously to the same customer is in accordance with Financial Accounting Standards Board Accounting Standards Codification (“ASC”) Subtopic 985-605, *Software – Revenue Recognition*, ASC Subtopic 605-25, *Revenue Recognition – Multiple-Element Arrangements*, and ASC Section 605-10-S99 (Staff Accounting Bulletin Topic 13, *Revenue Recognition*). Specifically, if the Company enters into contracts for the sale of services and software or hardware, then the Company evaluates whether each element should be accounted for separately by considering the following criteria: (1) whether the deliverables have value to the client on a stand-alone basis; and (2) whether delivery or performance of the undelivered item or items is considered probable and substantially in the control of the Company (only if the arrangement includes a general right of return related to the delivered item). Further, for sales of software and services, the Company also evaluates whether the services are essential to the functionality of the software and if it has fair value evidence for each deliverable. If the Company concludes that the separation criteria are met, then it accounts for each deliverable in the transaction separately, based on the relevant revenue recognition policies. Generally, all deliverables of the Company’s multiple element arrangements meet these criteria and are accounted for separately, with the arrangement consideration allocated among the deliverables using vendor specific objective evidence of the selling price. As a result, the Company generally recognizes software and hardware sales upon delivery to the customer and services consistent with the policies described herein.

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Further, delivery of software and hardware sales, when sold contemporaneously with services, can generally occur at varying times depending on the specific client project arrangement. Delivery of services generally occurs over a period of time consistent with the timeline as outlined in the client contract.

There are no significant cancellation or termination-type provisions for the Company's software and hardware sales. Contracts for professional services provide for a general right, to the client or the Company, to cancel or terminate the contract within a given period of time (generally 10 to 30 day notice is required). The client is responsible for any time and expenses incurred up to the date of cancellation or termination of the contract.

The Company may provide multiple services under the terms of an arrangement and is required to assess whether one or more units of accounting are present. Service fees are typically accounted for as one unit of accounting, as fair value evidence for individual tasks or milestones is not available. The Company follows the guidelines discussed above in determining revenues; however, certain judgments and estimates are made and used to determine revenues recognized in any accounting period. If estimates are revised, material differences may result in the amount and timing of revenues recognized for a given period.

Revenues are presented net of taxes assessed by governmental authorities. Sales taxes are generally collected and subsequently remitted on all software and hardware sales and certain services transactions as appropriate.

#### **Fair Value of Financial Instruments**

Cash equivalents, accounts receivable, accounts payable, other accrued liabilities, and debt are stated at amounts which approximate fair value due to the near term maturities of these instruments.

### **3. Stock-Based Compensation**

Stock-based compensation is accounted for in accordance with ASC Topic 718, *Compensation – Stock Compensation* ("ASC Topic 718"). The Company recognizes stock-based compensation ratably using the straight-line attribution method over the requisite service period. In addition, pursuant to ASC Topic 718, the Company is required to estimate the amount of expected forfeitures when calculating stock-based compensation, instead of accounting for forfeitures as they occur.

#### **Stock Award Plans**

The Company made various award grants under the 2009 Long-Term Incentive Plan prior to May 2012. In May 2012, the Company's stockholders approved the 2012 Long-Term Incentive Plan (the "Incentive Plan"), which had been previously approved by the Company's Board of Directors. The Incentive Plan allows for the granting of various types of stock awards, not to exceed a total of 2.5 million shares, to eligible individuals. The Compensation Committee of the Board of Directors administers the Incentive Plan and determines the terms of all stock awards made under the Incentive Plan.

Stock-based compensation cost recognized for the three and nine months ended September 30, 2012 was approximately \$2.5 million and \$7.0 million, respectively, which included \$0.4 million and \$1.1 million, respectively, of expense for retirement savings plan contributions. The associated current and future income tax benefits recognized for the three and nine months ended September 30, 2012 were approximately \$0.8 million and \$2.3 million, respectively. Stock-based compensation cost recognized for the three and nine months ended September 30, 2011 was approximately \$2.4 million and \$6.8 million, respectively, which included \$0.3 million and \$0.8 million, respectively, of expense for retirement savings plan contributions. The associated current and future income tax benefits recognized for the three and nine months ended September 30, 2011 were approximately \$0.8 million and \$2.2 million, respectively. As of September 30, 2012, there was \$13.6 million of total unrecognized compensation cost related to non-vested stock-based awards. This cost is expected to be recognized over a weighted-average period of two years.

Stock option activity for the nine months ended September 30, 2012 was as follows (in thousands, except exercise price information):

	<b>Shares</b>	<b>Range of Exercise Prices</b>	<b>Weighted-Average Exercise Price</b>
Options outstanding at January 1, 2012	358	\$ 0.03 – 9.19	\$ 4.61
Options exercised	(25 )	0.03 – 7.48	2.23
Options canceled	(9 )	1.15 – 4.40	1.45
Options outstanding at September 30, 2012	324	0.50 – 9.19	4.88
Options vested at September 30, 2012	324	0.50 – 9.19	4.88

Restricted stock activity for the nine months ended September 30, 2012 was as follows (in thousands, except fair value information):

	Shares	Weighted-Average Grant Date Fair Value
Restricted stock awards outstanding at January 1, 2012	2,043	\$ 9.16
Awards granted	413	11.78
Awards vested	(396 )	9.37
Awards forfeited	(132 )	8.86
Restricted stock awards outstanding at September 30, 2012	1,928	\$ 9.68

#### 4. Net Income per Share

The following table presents the calculation of basic and diluted net income per share (in thousands, except per share information):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2012	2011	2012	2011
Net income	\$ 5,142	\$ 3,466	\$ 11,731	\$ 8,026
Basic:				
Weighted-average shares of common stock outstanding	30,021	27,744	29,273	27,679
Shares used in computing basic net income per share	30,021	27,744	29,273	27,679
Effect of dilutive securities:				
Stock options	190	228	201	313
Warrants (1)	--	6	--	7
Restricted stock subject to vesting	662	548	619	592
Contingently issuable shares (2)	104	467	107	156
Shares issuable for acquisition consideration (3)	697	525	644	307
Shares used in computing diluted net income per share	31,674	29,518	30,844	29,054
Basic net income per share	\$ 0.17	\$ 0.12	\$ 0.40	\$ 0.29
Diluted net income per share	\$ 0.16	\$ 0.12	\$ 0.38	\$ 0.28
Anti-dilutive options and restricted stock not included in the calculation of diluted net income per share	14	519	14	319

(1) All outstanding warrants expired on December 30, 2011.

(2) Represents the Company's estimate of shares to be issued to Exervio Consulting, Inc. ("Exervio") pursuant to the Asset Purchase Agreement. Refer to Note 7 for further discussion.

(3) Represents the shares held in escrow pursuant to the Agreements and Plans of Merger with speakTECH and Northridge Systems, Inc. ("Northridge") and pursuant to the Asset Purchase Agreements with PointBridge Solutions, LLC ("PointBridge") and Nascent Systems, LP ("Nascent") as part of the consideration. These shares were not included in the calculation of basic net income per share due to the uncertainty of their ultimate status.

## 5. Commitments and Contingencies

The Company leases office space and certain equipment under various operating lease agreements. The Company has the option to extend the term of certain lease agreements. Future minimum commitments under these lease agreements as of September 30, 2012 are as follows (in thousands):

	<b>Operating Leases</b>
2012 remaining	\$ 961
2013	3,153
2014	2,542
2015	2,005
2016	1,907
Thereafter	2,227
Total minimum lease payments	<u>\$ 12,795</u>

## 6. Balance Sheet Components

	<b>September 30, 2012</b>	<b>December 31, 2011</b>
	(in thousands)	
<b>Accounts receivable:</b>		
Accounts receivable	\$ 54,346	\$ 44,438
Unbilled revenues	24,885	17,511
Allowance for doubtful accounts	(1,140)	(1,057)
Total	<u>\$ 78,091</u>	<u>\$ 60,892</u>

<b>Property and equipment:</b>		
Computer hardware (useful life of 3 years)	\$ 6,808	\$ 5,710
Furniture and fixtures (useful life of 5 years)	1,907	1,474
Leasehold improvements (useful life of 5 years)	1,711	1,801
Software (useful life of 1 year)	1,858	1,494
Less: Accumulated depreciation	(7,758)	(6,989)
Total	<u>\$ 4,526</u>	<u>\$ 3,490</u>

<b>Other current liabilities:</b>		
Accrued variable compensation	\$ 7,963	\$ 6,998
Estimated fair value of contingent consideration liability (Note 7)	1,474	2,377
Accrued subcontractor fees	2,218	2,392
Payroll related costs	2,877	2,504
Accrued medical claims expense	1,122	902
Accrued reimbursable expense	1,159	651
Deferred revenues	1,556	1,041
Acquired liabilities	124	239
Other current liabilities	2,185	1,379
Total	<u>\$ 20,678</u>	<u>\$ 18,483</u>

## 7. Business Combinations

### Acquisition of Exervio

On April 1, 2011, the Company acquired substantially all of the assets of Exervio pursuant to the terms of an Asset Purchase Agreement. Exervio was based in Charlotte, North Carolina, and was a business and management consulting firm focused on program and project management, process improvement, and data/business analytics. The acquisition of Exervio enhanced the Company's management consulting skills and qualifications, as well as extended the Company's presence in North Carolina and Georgia.

The Company estimated the total allocable purchase price consideration to be \$11.2 million. The purchase price was comprised of \$6.5 million in cash paid and \$2.8 million of Company common stock issued at closing, increased by \$1.9 million representing the fair value estimate of additional earnings-based contingent consideration, which was partially realized by the Exervio selling shareholders 12 months after the closing date of the acquisition, and the remainder potentially realized 18 months after the closing date of the acquisition. Of the earnings-based contingent consideration, 25% will be paid in cash and 75% will be issued in stock to the Exervio selling shareholders. The contingent consideration is recorded in "Other current liabilities" on the Condensed Consolidated Balance Sheet as of September 30, 2012. The Company incurred approximately \$0.6 million in transaction costs, which were expensed when incurred.

The Company has allocated the total purchase price consideration between tangible assets, identified intangible assets, liabilities, and goodwill as follows (in millions):

Acquired tangible assets	\$	2.7
Acquired intangible assets		4.5
Liabilities assumed		(1.2 )
Goodwill		5.2
Total purchase price	\$	<u>11.2</u>

The Company estimated that the intangible assets acquired have useful lives of nine months to seven years.

#### Acquisition of JCB Partners, LLC ("JCB")

On July 1, 2011, the Company acquired substantially all of the assets of JCB pursuant to the terms of an Asset Purchase Agreement. JCB was based in Denver, Colorado, and was a business and technology consulting firm focused on enterprise performance management, analytics, and business intelligence solutions, primarily leveraging the IBM Cognos suite of software products. The acquisition of JCB further enhanced the Company's position in business intelligence and enterprise performance management and increased access to CFO suites, as well as extended the Company's presence in Denver, Chicago, and Northern and Southern California.

The Company estimated the total allocable purchase price consideration to be \$16.6 million. The purchase price was comprised of \$12.5 million in cash paid and \$4.1 million of Company common stock issued at closing. The Company incurred approximately \$0.6 million in transaction costs, which were expensed when incurred.

The Company has allocated the total purchase price consideration between tangible assets, identified intangible assets, liabilities, and goodwill as follows (in millions):

Acquired tangible assets	\$	3.1
Acquired intangible assets		3.0
Liabilities assumed		(1.2 )
Goodwill		11.7
Total purchase price	\$	<u>16.6</u>

The Company estimated that the intangible assets acquired have useful lives of six months to five years.

#### Acquisition of PointBridge

On February 8, 2012, the Company acquired substantially all of the assets of PointBridge pursuant to the terms of an Asset Purchase Agreement. PointBridge was based in Chicago, Illinois, and was a business and technology consulting firm focused on collaboration, web content management, unified communications and business intelligence, primarily leveraging Microsoft technologies. The acquisition of PointBridge will further solidify the Company's position among the largest and most capable Microsoft systems integrator consulting firms, as well as extending the Company's presence in Chicago, Milwaukee and Boston.

The Company has initially estimated the total allocable purchase price consideration to be \$20.5 million. The initial purchase price estimate is comprised of \$14.4 million in cash paid and \$6.1 million of Company common stock issued at closing. The Company incurred approximately \$0.7 million in transaction costs, which were expensed when incurred.

The Company has estimated the allocation of the total purchase price consideration between tangible assets, identified intangible assets, liabilities, and goodwill as follows (in millions):

Acquired tangible assets	\$	5.6
Acquired intangible assets		6.2
Liabilities assumed		(1.1 )
Goodwill		9.8
Total purchase price	\$	<u>20.5</u>

The Company estimated that the intangible assets acquired have useful lives of 11 months to five years.

The amounts above represent the fair value estimates as of September 30, 2012 and are subject to subsequent adjustment as the Company obtains additional information during the measurement period and finalizes its fair value estimates. Any subsequent adjustments to these fair value estimates occurring during the measurement period will result in an adjustment to goodwill or income, as applicable.

#### Acquisition of Nascent

On June 1, 2012, the Company acquired substantially all of the assets of Nascent pursuant to the terms of an Asset Purchase Agreement. Nascent was based in Dallas, Texas, and was a full-service software evaluation and implementation firm that specialized in working with the Oracle E-Business Suite and Vertex for sales, use and value added taxes. The acquisition of Nascent will allow the Company significant cross-selling and growth opportunity within the existing client base with Oracle E-Business Suite, as well as extending the Company's presence in the Texas, Oklahoma, Louisiana, and Arkansas markets.

The Company has initially estimated the total allocable purchase price consideration to be \$16.5 million. The initial purchase price estimate is comprised of \$11.3 million in cash paid and \$5.2 million of Company common stock issued at closing. The Company incurred approximately \$0.6 million in transaction costs, which were expensed when incurred.

The Company has estimated the allocation of the total purchase price consideration between tangible assets, identified intangible assets, liabilities, and goodwill as follows (in millions):

Acquired tangible assets	\$	3.9
Acquired intangible assets		4.4
Liabilities assumed		(1.0 )
Goodwill		9.2
Total purchase price	\$	<u>16.5</u>

The Company estimated that the intangible assets acquired have useful lives of seven months to five years.

The amounts above represent the fair value estimates as of September 30, 2012 and are subject to subsequent adjustment as the Company obtains additional information during the measurement period and finalizes its fair value estimates. Any subsequent adjustments to these fair value estimates occurring during the measurement period will result in an adjustment to goodwill or income, as applicable.

#### Acquisition of Northridge

On July 1, 2012, the Company acquired Northridge pursuant to the terms of an Agreement and Plan of Merger. Northridge was based in Atlanta, Georgia, and was an expert in the areas of business consulting, user experience, and collaboration technology primarily leveraging Microsoft technologies. The acquisition of Northridge will further enhance the Company's portfolio of services in collaboration strategy, portal migration and implementation, dashboards and analytics, user experience and branding, collaborative websites, and custom collaboration solutions utilizing Microsoft systems, as well as extending the Company's presence in the Atlanta and Charlotte markets.

The Company has initially estimated the total allocable purchase price consideration to be \$13.9 million. The initial purchase price estimate is comprised of \$10.7 million in cash paid and \$3.2 million of Company common stock issued at closing. The Company incurred approximately \$0.6 million in transaction costs, which were expensed when incurred.

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The Company has estimated the allocation of the total purchase price consideration between tangible assets, identified intangible assets, liabilities, and goodwill as follows (in millions):

Acquired tangible assets	\$	3.5
Acquired intangible assets		4.1
Liabilities assumed		(3.1 )
Goodwill		9.4
Total purchase price	\$	13.9

The Company estimated that the intangible assets acquired have useful lives of nine months to five years.

The amounts above represent the fair value estimates as of September 30, 2012 and are subject to subsequent adjustment as the Company obtains additional information during the measurement period and finalizes its fair value estimates. Any subsequent adjustments to these fair value estimates occurring during the measurement period will result in an adjustment to goodwill or income, as applicable.

The results of the PointBridge, Nascent, and Northridge operations have been included in the Company's condensed consolidated financial statements since the respective acquisition dates.

The aggregate amounts of revenue and net income of PointBridge, Nascent, and Northridge included in the Company's Condensed Consolidated Statements of Operations from the acquisition date to September 30, 2012 are as follows (in thousands):

		Acquisition Date to September 30, 2012
Revenues	\$	21,297
Net income	\$	1,467

#### Pro-forma Results of Operations (Unaudited)

The following presents the unaudited pro-forma combined results of operations of the Company with PointBridge, Nascent, and Northridge for the nine months ended September 30, 2012 and Exervio, JCB, PointBridge, Nascent, and Northridge for the nine months ended September 30, 2011, after giving effect to certain pro-forma adjustments related to the amortization of acquired intangible assets and assuming PointBridge, Nascent, and Northridge were acquired as of the beginning of 2011 and Exervio and JCB were acquired as of the beginning of 2010. These unaudited pro-forma results are presented in compliance with the adoption of Accounting Standards Update ("ASU") 2010-29, *Business Combinations (Topic 805): Disclosure of Supplementary Pro Forma Information for Business Combinations*, and are not necessarily indicative of the actual consolidated results of operations had the acquisitions actually occurred on January 1, 2011 or January 1, 2010 or of future results of operations of the consolidated entities (in thousands):

	September 30,	
	2012	2011
Revenues	\$ 259,098	\$ 237,322
Net income	\$ 13,832	\$ 10,188
Basic net income per share	\$ 0.46	\$ 0.35
Diluted net income per share	\$ 0.45	\$ 0.33
Shares used in computing basic net income per share	29,953	28,845
Shares used in computing dilute net income per share	30,848	30,640

#### **8. Goodwill and Intangible Assets**

Goodwill represents the excess purchase price over the fair value of net assets acquired, or net liabilities assumed, in a business combination. In accordance with ASC Topic 350, *Intangibles – Goodwill and Other*, the Company performs an annual impairment test of goodwill. The Company evaluates goodwill as of October 1 each year and more frequently if events or changes in circumstances indicate that goodwill might be impaired.

Other intangible assets include customer relationships, non-compete arrangements, trade names, customer backlog, and internally developed software, which are being amortized over the assets' estimated useful lives using the straight-line method. Estimated useful lives range from seven months to eight years. Amortization of the intangible assets is considered an operating expense and is included in "Amortization" in the accompanying Condensed Consolidated Statements of Operations. The Company periodically reviews the estimated useful lives of its identifiable intangible assets, taking into consideration any events or circumstances that might result in a lack of recoverability or revised useful life.

#### Goodwill

The changes in the carrying amount of goodwill for the nine months ended September 30, 2012 are as follows (in thousands):

Balance at December 31, 2011	\$	132,038
Preliminary purchase price allocation for acquisitions (Note 7)		28,400
Purchase accounting adjustments		(239)
Balance at September 30, 2012	\$	160,199

#### Intangible Assets with Definite Lives

The following table presents a summary of the Company's intangible assets that are subject to amortization (in thousands):

	September 30, 2012			December 31, 2011		
	Gross Carrying Amounts	Accumulated Amortization	Net Carrying Amounts	Gross Carrying Amounts	Accumulated Amortization	Net Carrying Amounts
Customer relationships	\$ 23,842	\$ (7,002 )	\$ 16,840	\$ 20,713	\$ (11,976 )	\$ 8,737
Non-compete agreements	1,156	(353 )	803	1,073	(309 )	764
Customer backlog	1,410	(833 )	577	--	--	--
Trade name	265	(155 )	110	152	(84 )	68
Internally developed software	1,692	(614 )	1,078	1,036	(477 )	559
Total	\$ 28,365	\$ (8,957 )	\$ 19,408	\$ 22,974	\$ (12,846 )	\$ 10,128

The estimated useful lives of identifiable intangible assets are as follows:

Customer relationships	3 – 8 years
Non-compete agreements	3 – 5 years
Internally developed software	3 – 5 years
Trade name	9 months – 3 years
Customer backlog	7 – 11 months

#### 9. Line of Credit

On May 23, 2011, the Company renewed and extended the term of its Credit Agreement (the "Credit Agreement") with Silicon Valley Bank ("SVB"), U.S. Bank National Association, and Bank of America, N.A. The Credit Agreement provides for revolving credit borrowings up to a maximum principal amount of \$50.0 million, subject to a commitment increase of \$25.0 million. The Credit Agreement also allows for the issuance of letters of credit in the aggregate amount of up to \$1.0 million at any one time; outstanding letters of credit reduce the credit available for revolving credit borrowings. Substantially all of the Company's assets are pledged to secure the credit facility.

All outstanding amounts owed under the Credit Agreement become due and payable no later than the final maturity date of May 23, 2015; thus all outstanding amounts are classified as long-term as of September 30, 2012. Borrowings under the credit facility bear interest at the Company's option of SVB's prime rate (4.00% on September 30, 2012) plus a margin ranging from 0.00% to 0.50% or one-month LIBOR (0.214% on September 30, 2012) plus a margin ranging from 2.50% to 3.00%. The additional margin amount is dependent on the level of outstanding borrowings. As of September 30, 2012, the Company had \$38.5 million of available borrowing capacity. An annual commitment fee of 0.30% is incurred on the unused portion of the line of credit.



The Company is required to comply with various financial covenants under the Credit Agreement. Specifically, the Company is required to maintain a ratio of earnings before interest, taxes, depreciation, and amortization (“EBITDA”) plus stock compensation and minus income taxes paid and capital expenditures to interest expense and scheduled payments due for borrowings on a trailing three months basis annualized of not less than 2.00 to 1.00 and a ratio of current maturities of long-term debt to EBITDA plus stock compensation and minus income taxes paid and capital expenditures of not more than 2.75 to 1.00.

#### 10. Income Taxes

The Company files income tax returns in the U.S. federal jurisdiction, and various state and foreign jurisdictions. The Internal Revenue Service (“IRS”) has completed examinations of the Company’s U.S. income tax returns or the statute has passed on years through 2007. As of September 30, 2012, the IRS has proposed no significant adjustments to any of the Company’s tax positions.

Under the provisions of the ASC Subtopic 740-10-25, *Income Taxes - Recognition*, the Company had no unrecognized tax benefits as of September 30, 2012.

The Company’s effective tax rate was 31.0% and 38.1% for the respective three and nine months ended September 30, 2012 compared to 39.5% and 41.2% for the respective three and nine months ended September 30, 2011. The decrease in the effective rate is primarily due to a research and development tax credit taken on the Company’s 2011 income tax return filed during the third quarter 2012. The difference between the Company’s federal statutory rate of 35% and effective tax rate relates primarily to state income taxes, net of the federal benefit, offset by the impact of the research and development tax credit. As of September 30, 2012, the Company’s net current deferred tax asset was \$0.8 million and its net non-current deferred tax asset was \$0.7 million. Generally, deferred tax assets are related to stock compensation, accruals, and net operating losses of acquired companies. Net current deferred tax assets are recorded in “Other current assets” and net non-current deferred tax assets are recorded in “Other non-current assets” on the Condensed Consolidated Balance Sheets as of September 30, 2012.

#### 11. Recent Accounting Pronouncements

Effective January 1, 2012, the Company adopted ASU 2011-05, *Presentation of Comprehensive Income* (“ASU 2011-05”). ASU 2011-05 requires entities to report components of comprehensive income in either (1) a continuous statement of comprehensive income or (2) two separate but consecutive statements. Under the two-statement approach, the first statement would include components of net income, and the second statement would include components of other comprehensive income. ASU 2011-05 does not change the items that must be reported in other comprehensive income. The adoption of ASU 2011-05 did not impact the accounting for comprehensive income, but did affect the presentation of components of comprehensive income by eliminating the practice of showing these items within the Condensed Consolidated Statement of Stockholders’ Equity.

Effective January 1, 2012, the Company adopted ASU 2011-08, *Intangibles – Goodwill and Other* (“ASU 2011-08”). ASU 2011-08 permits an entity to make a qualitative assessment of whether it is more likely than not that a reporting unit’s fair value is less than its carrying amount before applying the two-step goodwill impairment test. If an entity concludes it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, it need not perform the two-step impairment test. The adoption of ASU 2011-08 did not have a material impact on the Company’s interim unaudited condensed consolidated financial statements.

#### Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

*Statements made in this Quarterly Report on Form 10-Q, including without limitation this Management’s Discussion and Analysis of Financial Condition and Results of Operations, other than statements of historical information, are forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements may sometimes be identified by such words as “may,” “will,” “expect,” “anticipate,” “believe,” “estimate” and “continue” or similar words. We believe that it is important to communicate our future expectations to investors. However, these forward-looking statements involve many risks and uncertainties. Our actual results could differ materially from those indicated in such forward-looking statements as a result of certain factors, including but not limited to, those set forth under Risk Factors in our Annual Report on Form 10-K previously filed with the SEC and elsewhere in this Quarterly Report on Form 10-Q. We are under no duty to update any of the forward-looking statements after the date of this Quarterly Report on Form 10-Q to conform these statements to actual results.*

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## Overview

We are an information technology consulting firm serving Forbes Global 2000 and other large enterprise companies with a primary focus on the United States. We help our clients gain competitive advantage by using Internet-based technologies to make their businesses more responsive to market opportunities and threats, strengthen relationships with their customers, suppliers and partners, improve productivity, and reduce information technology costs. We design, build and deliver business-driven technology solutions using third party software products. Our solutions include business analysis, portals and collaboration, business integration, user experience, enterprise content management, customer relationship management, interactive design, enterprise performance management, business process management, business intelligence, eCommerce, mobile platforms, custom applications, and technology platform implementations, among others. Our solutions enable our clients to operate a real-time enterprise that dynamically adapts business processes and the systems that support them to meet the changing demands of an increasingly global, Internet-driven and competitive marketplace.

### *Services Revenues*

Services revenues are derived from professional services that include developing, implementing, integrating, automating and extending business processes, technology infrastructure, and software applications. Most of our projects are performed on a time and materials basis, while a smaller portion of our revenues is derived from projects performed on a fixed fee basis. Fixed fee engagements represented approximately 11% and 10% of our services revenues for the respective three and nine months ended September 30, 2012 compared to 10% and 12% for the respective three and nine months ended September 30, 2011. For time and material projects, revenues are recognized and billed by multiplying the number of hours our professionals expend in the performance of the project by the established billing rates. For fixed fee projects, revenues are generally recognized using an input method based on the ratio of hours expended to total estimated hours. Amounts invoiced and collected in excess of revenues recognized are classified as deferred revenues. On most projects, we are also reimbursed for out-of-pocket expenses such as airfare, lodging, and meals. These reimbursements are included as a component of revenues. The aggregate amount of reimbursed expenses will fluctuate depending on the location of our clients, the total number of our projects that require travel, and whether our arrangements with our clients provide for the reimbursement of travel and other project related expenses.

### *Software and Hardware Revenues*

Software and hardware revenues are derived from sales of third-party software and hardware. Revenues from sales of third-party software and hardware are generally recorded on a gross basis provided we act as a principal in the transaction. On rare occasions, we do not meet the requirements to be considered a principal in the transaction and act as an agent. In these cases, revenues are recorded on a net basis. Software and hardware revenues are expected to fluctuate depending on our clients' demand for these products.

If we enter into contracts for the sale of services and software or hardware, management evaluates whether each element should be accounted for separately by considering the following criteria: (1) whether the deliverables have value to the client on a stand-alone basis; and (2) whether delivery or performance of the undelivered item or items is considered probable and substantially in our control (only if the arrangement includes a general right of return related to the delivered item). Further, for sales of software and services, management also evaluates whether the services are essential to the functionality of the software and has fair value evidence for each deliverable. If management concludes that the separation criteria are met, then it accounts for each deliverable in the transaction separately, based on the relevant revenue recognition policies. Generally, all deliverables of our multiple element arrangements meet these criteria and are accounted for separately, with the arrangement consideration allocated among the deliverables using vendor specific objective evidence of the selling price. As a result, we generally recognize software and hardware sales upon delivery to the customer and services consistent with the policies described herein.

Further, delivery of software and hardware sales, when sold contemporaneously with services, can generally occur at varying times depending on the specific client project arrangement. Delivery of services generally occurs over a period of time consistent with the timeline as outlined in the client contract.

There are no significant cancellation or termination-type provisions for our software and hardware sales. Contracts for professional services provide for a general right, to the client or us, to cancel or terminate the contract within a given period of time (generally 10 to 30 day notice is required). The client is responsible for any time and expenses incurred up to the date of cancellation or termination of the contract.

### *Cost of revenues*

Cost of revenues consists primarily of cash and non-cash compensation and benefits, including bonuses and non-cash compensation related to equity awards. Cost of revenues also includes the costs associated with subcontractors. Third-party software and hardware costs, reimbursable expenses and other unreimbursed project-related expenses are also included in cost of revenues. Project-related expenses will fluctuate generally depending on outside factors including the cost and frequency of travel and the location of our clients. Cost of revenues does not include depreciation of assets used in the production of revenues which are primarily personal computers, servers and other information technology related equipment.

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## *Gross Margins*

Our gross margins for services are affected by the utilization rates of our professionals (defined as the percentage of our professionals' time billed to clients divided by the total available hours in the respective period), the salaries we pay our professionals, and the average billing rate we receive from our clients. If a project ends earlier than scheduled, we retain professionals in advance of receiving project assignments, or if demand for our services declines, our utilization rate will decline and adversely affect our gross margins. Gross margin percentages of third-party software and hardware sales are typically lower than gross margin percentages for services, and the mix of services and software and hardware for a particular period can significantly impact our total combined gross margin percentage for such period. In addition, gross margin for software and hardware sales can fluctuate due to pricing and other competitive pressures.

## *Selling, General, and Administrative Expenses*

Selling, general and administrative ("SG&A") expenses are primarily composed of sales-related costs, general and administrative salaries, stock compensation expense, recruiting expense, office costs, bad debts, variable compensation costs, and other miscellaneous expenses. We work to minimize selling costs by focusing on repeat business with existing clients and by accessing sales leads generated by our software vendors, most notably IBM, Oracle and Microsoft, whose products we use to design and implement solutions for our clients. These relationships enable us to reduce our selling costs and sales cycle times and increase win rates through leveraging our partners' marketing efforts and endorsements.

## *Plans for Growth and Acquisitions*

Our goal is to continue to build one of the leading independent information technology consulting firms by expanding our relationships with existing and new clients and through the continuation of our disciplined acquisition strategy. Our future growth plan includes expanding our business with a primary focus on customers in the United States, both organically and through acquisitions. Given the economic conditions during 2008 and 2009 we suspended acquisition activity pending improved visibility into the health of the economy. With the return to growth in 2010 we have resumed our disciplined acquisition strategy as evidenced by our acquisitions of Kerdock Consulting, LLC in March 2010, speakTECH in December 2010, Exervio in April 2011, JCB in July 2011, PointBridge in February 2012, Nascent in June 2012, and Northridge in July 2012. We also intend to further leverage our existing offshore capabilities to support our future growth and provide our clients flexible options for project delivery.

When analyzing revenue growth by base business compared to acquired companies in the Results of Operations section below, revenue attributable to base business is defined as revenue from an acquired company that has been owned for a full four quarters after the date of acquisition.

## **Results of Operations**

### ***Three months ended September 30, 2012 compared to three months ended September 30, 2011***

**Revenues.** Total revenues increased 25% to \$87.5 million for the three months ended September 30, 2012 from \$70.2 million for the three months ended September 30, 2011.

Services revenues increased 22% to \$75.9 million for the three months ended September 30, 2012 from \$62.5 million for the three months ended September 30, 2011. The increase in services revenues is primarily due to the acquisitions of PointBridge, Nascent, and Northridge during 2012. Services revenues attributable to our base business increased \$3.1 million while services revenues attributable to acquired companies increased \$10.3 million, resulting in a total increase of \$13.4 million.

Software and hardware revenues increased 93% to \$7.4 million for the three months ended September 30, 2012 from \$3.9 million for the three months ended September 30, 2011 primarily due to an increase in the volume of initial and larger software sales during the third quarter of 2012. Reimbursable expenses increased 7% to \$4.1 million for the three months ended September 30, 2012 from \$3.8 million for the three months ended September 30, 2011 as a result of the increase in services revenue. We do not realize any profit on reimbursable expenses.

**Cost of Revenues.** Cost of revenues increased 24% to \$59.2 million for the three months ended September 30, 2012 from \$47.9 million for the three months ended September 30, 2011. The increase in cost of revenues is primarily related to the increase in revenues, specifically the increase in services revenue. The average number of professionals performing services, including subcontractors, increased to 1,576 for the three months ended September 30, 2012 from 1,416 for the three months ended September 30, 2011.

Costs associated with software and hardware sales increased 84% to \$6.3 million for the three months ended September 30, 2012 from \$3.4 million for the three months ended September 30, 2011, which directly relates to the increase in software and hardware revenues discussed above.

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**Gross Margin.** Gross margin increased 26% to \$28.2 million for the three months ended September 30, 2012 from \$22.3 million for the three months ended September 30, 2011. Gross margin as a percentage of revenues increased to 32.3% for the three months ended September 30, 2012 from 31.8% for the three months ended September 30, 2011 primarily due to an increase in services gross margin. Services gross margin, excluding reimbursable expenses, increased to 35.7% or \$27.1 million for the three months ended September 30, 2012 from 35.0% or \$21.9 million for the three months ended September 30, 2011. The increase in services gross margin is primarily a result of a higher average bill rate. The average bill rate for our professionals, excluding subcontractors, increased to \$120 per hour for the three months ended September 30, 2012 from \$116 per hour for the three months ended September 30, 2011. The average bill rate, excluding offshore resources, increased to \$130 per hour for the three months ended September 30, 2012 from \$126 per hour for the three months ended September 30, 2011.

**Selling, General and Administrative.** SG&A expenses increased 28% to \$17.7 million for the three months ended September 30, 2012 from \$13.8 million for the three months ended September 30, 2011, primarily due to increases in sales-related costs, salaries, and bonus expense. SG&A expenses, as a percentage of revenues, were 20.3% and 19.7% for the three months ended September 30, 2012 and 2011, respectively.

**Depreciation.** Depreciation expense increased 26% to \$0.6 million for the three months ended September 30, 2012 from \$0.5 million for the three months ended September 30, 2011. The increase in depreciation expense is mainly attributable to the addition of depreciation related to fixed assets from acquisitions during 2012. Depreciation expense as a percentage of revenues was 0.7% for the three months ended September 30, 2012 and 2011.

**Amortization.** Amortization expense increased 14% to \$2.3 million for the three months ended September 30, 2012 from \$2.0 million for the three months ended September 30, 2011. The increase in amortization expense is due to the addition of amortization related to acquired intangible assets during 2011 and 2012.

**Adjustment to Fair Value of Contingent Consideration.** An adjustment of \$0.1 million was made during the three months ended September 30, 2012 for the accretion of the fair value estimate for the earnings-based contingent consideration related to the Exervio acquisition. The adjustment of \$0.3 million made during the three months ended September 30, 2011 related to the speakTECH and Exervio acquisitions.

**Provision for Income Taxes.** We provide for federal, state and foreign income taxes at the applicable statutory rates adjusted for non-deductible expenses. Our effective tax rate decreased to 31.0% for the three months ended September 30, 2012 from 39.5% for the three months ended September 30, 2011 due mainly to a research and development tax credit taken on our 2011 income tax return filed during the third quarter of 2012. The research and development tax credit for 2012 has not yet been enacted by Congress. Any tax benefit for the 2012 tax year will be estimated and recorded when the tax credit becomes effective for 2012.

***Nine months ended September 30, 2012 compared to nine months ended September 30, 2011***

**Revenues.** Total revenues increased 27% to \$244.0 million for the nine months ended September 30, 2012 from \$192.0 million for the nine months ended September 30, 2011.

Services revenues increased 25% to \$214.8 million for the nine months ended September 30, 2012 from \$171.9 million for the nine months ended September 30, 2011. The increase in services revenues is primarily due to the acquisitions completed in 2012. Services revenues attributable to our base business increased \$13.8 million while services revenues attributable to acquired companies increased \$29.1 million, resulting in a total increase of \$42.9 million.

Software and hardware revenues increased 61% to \$17.1 million for the nine months ended September 30, 2012 from \$10.6 million for the nine months ended September 30, 2011 due to increases in the volume of initial and larger software license sales and increases in the volume and larger hardware sales compared to 2011. Reimbursable expenses increased 27% to \$12.1 million for the nine months ended September 30, 2012 from \$9.5 million for the nine months ended September 30, 2011. We do not realize any profit on reimbursable expenses.

**Cost of Revenues.** Cost of revenues increased 26% to \$166.3 million for the nine months ended September 30, 2012 from \$132.2 million for the nine months ended September 30, 2011. The increase in cost of revenues is directly related to the increase in revenues, specifically the increase in services revenues. The average number of professionals performing services, including subcontractors, increased to 1,515 for the nine months ended September 30, 2012 from 1,291 for the nine months ended September 30, 2011.

Costs associated with software and hardware sales increased 58% to \$14.6 million for the nine months ended September 30, 2012 from \$9.2 million for the nine months ended September 30, 2011, which is directly related to the increase in software and hardware revenues discussed above.

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**Gross Margin.** Gross margin increased 30% to \$77.6 million for the nine months ended September 30, 2012 from \$59.8 million for the nine months ended September 30, 2011. Gross margin as a percentage of revenues increased to 31.8% for the nine months ended September 30, 2012 from 31.2% for the nine months ended September 30, 2011, primarily due to increases in services gross margin. Services gross margin, excluding reimbursable expenses, increased to 34.9% or \$75.1 million for the nine months ended September 30, 2012 from 34.0% or \$58.4 million for the nine months ended September 30, 2011. The increase in services gross margin is primarily a result of higher average bill rates. The average bill rate for our professionals, excluding subcontractors, increased to \$118 per hour for the nine months ended September 30, 2012 from \$116 per hour for the nine months ended September 30, 2011, primarily due to the improved pricing opportunities. The average bill rate for the nine months ended September 30, 2012, excluding offshore resources, was \$128 per hour compared to \$125 per hour for the nine months ended September 30, 2011.

**Selling, General and Administrative.** SG&A expenses increased 28% to \$49.1 million for the nine months ended September 30, 2012 from \$38.3 million for the nine months ended September 30, 2011 primarily due to increases in bonus expense, sales-related costs, and office costs. SG&A expenses, as a percentage of revenues, were 20.1% and 19.9% for the nine months ended September 30, 2012 and 2011, respectively.

**Depreciation.** Depreciation expense increased 32% to \$1.6 million for the nine months ended September 30, 2012 from \$1.2 million for the nine months ended September 30, 2011. The increase in depreciation expense is mainly attributable to the addition of depreciation related to fixed assets from acquisitions during 2011 and 2012. Depreciation expense as a percentage of revenues was 0.7% and 0.6% for the nine months ended September 30, 2012 and 2011, respectively.

**Amortization.** Amortization expense increased 21% to \$5.7 million for the nine months ended September 30, 2012 from \$4.7 million for the nine months ended September 30, 2011. The increase in amortization expense is due to the addition of amortization related to acquired intangible assets during 2011 and 2012.

**Acquisition Costs.** Acquisition-related costs increased 49% to \$1.8 million for the nine months ended September 30, 2012 from \$1.2 million for the nine months ended September 30, 2011. The acquisition-related costs incurred during 2012 were related to the acquisition of PointBridge, Nascent and Northridge, while the acquisition-related costs incurred during 2011 were related to the acquisition of Exervio and JCB. Acquisition-related costs were incurred for legal, accounting, tax, and valuation services performed by third parties.

**Adjustment to Fair Value of Contingent Consideration.** An adjustment of \$0.4 million was made during the nine months ended September 30, 2012 for the accretion of the fair value estimate for the earnings-based contingent consideration related to the Exervio acquisition. The adjustment of \$0.8 million made during the nine months ended September 30, 2011 related to the speakTECH and Exervio acquisitions.

**Provision for Income Taxes.** We provide for federal, state, and foreign income taxes at the applicable statutory rates adjusted for non-deductible expenses. Our effective tax rate decreased to 38.1% for the nine months ended September 30, 2012 from 41.2% for the nine months ended September 30, 2011 due mainly to a research and development tax credit taken on our 2011 income tax return filed during the third quarter of 2012. The research and development tax credit for 2012 has not yet been enacted by Congress. Any tax benefit for the 2012 tax year will be estimated and recorded when the tax credit becomes effective for 2012.

## Liquidity and Capital Resources

Selected measures of liquidity and capital resources are as follows (in millions):

	As of September 30, 2012	As of December 31, 2011
Cash, cash equivalents and investments	\$ 3.5	\$ 9.7
Working capital (including cash and cash equivalents)	\$ 58.0	\$ 51.5
Amounts available under credit facilities	\$ 38.5	\$ 50.0

### Net Cash Provided By Operating Activities

Net cash provided by operating activities for the nine months ended September 30, 2012 was \$20.8 million compared to \$1.9 million for the nine months ended September 30, 2011. For the nine months ended September 30, 2012, the primary components of operating cash flows were net income of \$11.7 million plus non-cash charges of \$14.1 million, offset by investments in working capital of \$5.0 million. The primary components of operating cash flows for the nine months ended September 30, 2011 were net income of \$8.0 million plus non-cash charges of \$13.2 million, offset by investments in working capital of \$19.3 million. The increase in cash resulting from operating activities is primarily related to the change in other assets, accounts payable and other liabilities. During 2012 there was a higher amount of accrued software costs and higher variable compensation liabilities compared to 2011. Our days sales outstanding as of September 30, 2012 and September 30, 2011 were 81 days.

#### *Net Cash Used In Investing Activities*

During the nine months ended September 30, 2012, we used \$36.4 million for acquisition related costs and \$1.5 million for purchases of equipment and to develop certain software. During the nine months ended September 30, 2011, we used \$19.0 million for acquisition related costs and \$2.5 million primarily on leasehold improvements and to develop certain software, offset by \$13.6 million in proceeds from the sale and maturity of our investments.

#### *Net Cash Provided By (Used In) Financing Activities*

During the nine months ended September 30, 2012, we received proceeds of \$116.1 million from our line of credit and we realized a tax benefit related to vesting of stock awards and stock option exercises plus proceeds from the exercise of stock options and sales of stock through the Employee Stock Purchase Plan of \$0.9 million. We made payments of \$104.6 million on our line of credit, used \$0.4 million to settle a portion of the contingent consideration for the purchase of Exervio, used \$0.6 million to repurchase shares of our common stock through the stock repurchase program and \$0.6 million to remit taxes withheld as part of a net share settlement of restricted stock vesting. For the nine months ended September 30, 2011, we received proceeds of \$3.6 million from exercises of stock options and sales of stock through our Employee Stock Purchase Plan and we realized a tax benefit of \$1.6 million related to vesting of stock awards and stock option exercises. We used \$9.5 million to repurchase shares of our common stock through the stock repurchase program and \$0.3 million in fees related to renewing our credit facility.

#### *Availability of Funds from Bank Line of Credit Facility*

On May 23, 2011, we renewed and extended the term of our Credit Agreement with SVB, U.S. Bank National Association, and Bank of America, N.A. The Credit Agreement provides for revolving credit borrowings up to a maximum principal amount of \$50.0 million, subject to a commitment increase of \$25.0 million. The Credit Agreement also allows for the issuance of letters of credit in the aggregate amount of up to \$1.0 million at any one time; outstanding letters of credit reduce the credit available for revolving credit borrowings. Substantially all of our assets are pledged to secure the credit facility.

All outstanding amounts owed under the Credit Agreement become due and payable no later than the final maturity date of May 23, 2015, thus all outstanding amounts are classified as long-term as of September 30, 2012. Borrowings under the credit facility bear interest at our option of SVB's prime rate (4.00% on September 30, 2012) plus a margin ranging from 0.00% to 0.50% or one-month LIBOR (0.214% on September 30, 2012) plus a margin ranging from 2.50% to 3.00%. The additional margin amount is dependent on the level of outstanding borrowings. As of September 30, 2012, we had \$38.5 million of available borrowing capacity. We incur an annual commitment fee of 0.30% on the unused portion of the line of credit.

As of September 30, 2012, we were in compliance with all covenants under our credit facility and we expect to be in compliance during the next twelve months.

#### *Stock Repurchase Program*

Prior to 2012, our Board of Directors authorized the repurchase of up to \$60.0 million of our common stock. In May 2012, our Board of Directors authorized the repurchase of up to an additional \$10.0 million of our common stock for a total repurchase program of \$70.0 million at September 30, 2012. The repurchase program expires December 31, 2013.

From time to time, we establish a written trading plan in accordance with Rule 10b5-1 of the Securities Exchange Act of 1934 (the "Exchange Act"), pursuant to which we make a portion of our stock repurchases. Additional repurchases will be at times and in amounts as the Company deems appropriate and will be made through open market transactions in compliance with Rule 10b-18 of the Exchange Act, subject to market conditions, applicable legal requirements, and other factors.

Since the program's inception on August 11, 2008, we have repurchased approximately \$54.6 million of our outstanding common stock through September 30, 2012.

#### *Lease Obligations*

There were no material changes outside the ordinary course of our business in lease obligations or other contractual obligations in the first nine months of 2012.

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## *Conclusion*

Of the total cash and cash equivalents reported on the condensed consolidated balance sheet as of September 30, 2012 of \$3.5 million, approximately \$3.1 million was held by the Company's Chinese operations and is considered to be indefinitely reinvested in those operations. The Company has no intention of repatriating cash from its Chinese operations in the foreseeable future.

We believe that the currently available funds, access to capital from our credit facility, and cash flows generated from operations will be sufficient to meet our working capital requirements and other capital needs for the next twelve months.

## **Critical Accounting Policies**

Our accounting policies are fully described in Note 2, *Summary of Significant Accounting Policies*, to our Consolidated Financial Statements in our 2011 Annual Report on Form 10-K. We believe our most critical accounting policies include revenue recognition, accounting for goodwill and intangible assets, purchase accounting, accounting for stock-based compensation, and income taxes.

## **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

### *Exchange Rate Sensitivity*

We are exposed to market risks associated with changes in foreign currency exchange rates because we generate a portion of our revenues and incur a portion of our expenses in currencies other than the U.S. dollar. As of September 30, 2012, we were exposed to changes in exchange rates between the U.S. dollar and the Canadian dollar, between the U.S. dollar and the Chinese Yuan, and between the U.S. dollar and the Indian Rupee. We have not hedged foreign currency exposures related to transactions denominated in currencies other than U.S. dollars. Our exposure to foreign currency risk is not significant.

### *Interest Rate Sensitivity*

As of September 30, 2012, there was \$11.5 million outstanding and \$38.5 million of available borrowing capacity on our line of credit. Our interest expense will fluctuate as the interest rate for the line of credit floats based, at our option, on the SVB's prime rate plus a margin or the one-month LIBOR rate plus a margin. Based on the \$11.5 million outstanding on the line of credit as of September 30, 2012, an increase in the interest rate of 100 basis points would add \$115,000 of interest expense per year, which is not considered material to our financial position or results of operations.

We had unrestricted cash, cash equivalents, and investments totaling \$3.5 million at September 30, 2012 and \$9.7 million at December 31, 2011. The unrestricted cash and cash equivalents are held for working capital purposes. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of these investments, we believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. Declines in interest rates, however, will reduce future investment income.

## **Item 4. Controls and Procedures**

### *Evaluation of Disclosure Controls and Procedures*

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, our management, with the participation of our principal executive officer and principal financial officer, concluded that these disclosure controls and procedures were effective.

There was no change in our internal control over financial reporting as defined in Exchange Act Rule 13a-15(f) during the three months ended September 30, 2012, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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## PART II. OTHER INFORMATION

### Item 1A. Risk Factors

In evaluating all forward-looking statements, you should specifically consider various risk factors that may cause actual results to vary from those contained in the forward-looking statements. Our risk factors are included in our Annual Report on Form 10-K for the year ended December 31, 2011, as filed with the SEC on March 1, 2012, and available at [www.sec.gov](http://www.sec.gov). There have been no material changes to these risk factors since the filing of our Form 10-K.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

#### *Unregistered Sales of Securities*

On July 1, 2012, we acquired Northridge. As part of the initial purchase price paid in this acquisition, we issued unregistered shares of our common stock to Northridge. The aggregate initial purchase price paid in this transaction was approximately \$13.9 million, which consisted of approximately \$10.7 million in cash and 325,044 unregistered shares of our common stock. We relied on Section 4(a)(2) of the Securities Act of 1933, as amended, as the basis for exemption from registration. These shares were issued to Northridge in a privately negotiated transaction and not pursuant to a public solicitation.

#### *Issuer Purchases of Securities*

Prior to 2012, our Board of Directors authorized the repurchase of up to \$60.0 million of our common stock. In May 2012, our Board of Directors authorized the repurchase of up to an additional \$10.0 million of our common stock for a total repurchase program of \$70.0 million at September 30, 2012. The repurchase program expires December 31, 2013. The program could be suspended or discontinued at any time, based on market, economic, or business conditions. The timing and amount of repurchase transactions will be determined by our management based on its evaluation of market conditions, share price, and other factors.

Since the program's inception on August 11, 2008, we have repurchased approximately \$54.6 million of our outstanding common stock through September 30, 2012.

Period	Total Number of Shares Purchased	Average Price Paid Per Share (1)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
Beginning Balance as of June 30, 2012	7,418,767	\$ 7.35	7,418,767	\$ 15,452,819
July 1-31, 2012	5,000	10.79	5,000	\$ 15,398,879
August 1-31, 2012	--	--	--	\$ 15,398,879
September 1-30, 2012	--	--	--	\$ 15,398,879
Ending Balance as of September 30, 2012	7,423,767	\$ 7.35	7,423,767	

(1) Average price paid per share includes commission.

### Item 5. Other Information

#### *Amendment and Restatement of Our Bylaws*

On October 30, 2012, our Board of Directors approved the amendment and restatement of our Bylaws, effective immediately. Section 3.3 of the Bylaws was amended to permit stockholders holding at least 25% of the Company's outstanding stock to call a special stockholders' meeting under certain circumstances. Additionally, Section 3.5 of the Bylaws was amended to eliminate the current plurality voting standard and require a director nominee to receive the affirmative vote of a majority of the votes cast at a meeting for the election of the director. A copy of the Amended and Restated Bylaws is attached hereto as Exhibit 3.4.

### Item 6. Exhibits

The exhibits filed as part of this Report on Form 10-Q are listed in the Exhibit Index immediately preceding the exhibits.

## SIGNATURES

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

PERFICIENT, INC.

Date: November 1, 2012

By: /s/ Jeffrey S. Davis  
Jeffrey S. Davis  
Chief Executive Officer (*Principal Executive Officer*)

Date: November 1, 2012

By: /s/ Paul E. Martin  
Paul E. Martin  
Chief Financial Officer (*Principal Financial Officer*)

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## EXHIBITS INDEX

Exhibit Number	Description
3.1	Certificate of Incorporation of Perficient, Inc., previously filed with the Securities and Exchange Commission as an Exhibit to our Registration Statement on Form SB-2 (File No. 333-78337) declared effective on July 28, 1999 by the Securities and Exchange Commission and incorporated herein by reference
3.2	Certificate of Amendment to Certificate of Incorporation of Perficient, Inc., previously filed with the Securities and Exchange Commission as an Exhibit to our Form 8-A (File No. 000-51167) filed with the Securities and Exchange Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 on February 15, 2005 and incorporated herein by reference
3.3	Certificate of Amendment to Certificate of Incorporation of Perficient, Inc., previously filed with the Securities and Exchange Commission as an Exhibit to our Registration Statement on form S-8 (File No. 333-130624) filed on December 22, 2005 and incorporated herein by reference
3.4*	Amended and Restated Bylaws of Perficient, Inc.
4.1	Specimen Certificate for shares of Perficient, Inc. common stock, previously filed with the Securities and Exchange Commission as an Exhibit to our Quarterly Report on Form 10-Q (File No. 001-15169) filed May 7, 2009 and incorporated herein by reference
31.1*	Certification by the Chief Executive Officer of Perficient, Inc. as required by Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification by the Chief Financial Officer of Perficient, Inc. as required by Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification by the Chief Executive Officer and Chief Financial Officer of Perficient, Inc. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101*	The following financial information from Perficient, Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2012, formatted in XBRL (eXtensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets as of September 30, 2012 (Unaudited) and December 31, 2011, (ii) Condensed Consolidated Statements of Operations (Unaudited) for the three and nine months ended September 30, 2012 and 2011, (iii) Condensed Consolidated Statement of Comprehensive Income (Unaudited) for the three and nine months ended September 30, 2012 and 2011, (iv) Condensed Consolidated Statement of Shareholders' Equity (Unaudited) for the nine months ended September 30, 2012, (v) Condensed Consolidated Statements of Cash Flows (Unaudited) for the nine months ended September 30, 2012 and 2011, and (vi) the Notes to Interim Unaudited Condensed Consolidated Financial Statements
*	Filed herewith.
**	Included but not to be considered "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section.

## CERTIFICATIONS

I, Jeffrey S. Davis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Perficient, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2012

/s/ Jeffrey S. Davis  
Jeffrey S. Davis  
Chief Executive Officer

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## CERTIFICATIONS

I, Paul E. Martin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Perficient, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2012

/s/ Paul E. Martin  
Paul E. Martin,  
Chief Financial Officer

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**CERTIFICATION OF  
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**

Pursuant to 18 U.S.C. Sec. 1350 and in connection with the accompanying report on Form 10-Q for the period ended September 30, 2012 that contains financial statements of Perficient, Inc. (the "Company") filed for such period and that is being filed concurrently with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company hereby certify that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 1, 2012

By: /s/ Jeffrey S. Davis  
Jeffrey S. Davis  
Chief Executive Officer (*Principal Executive Officer*)

Date: November 1, 2012

By: /s/ Paul E. Martin  
Paul E. Martin  
Chief Financial Officer (*Principal Financial Officer*)

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**AMENDED AND RESTATED**  
**BYLAWS**  
**OF**  
**PERFICIENT, INC.,**  
**A DELAWARE CORPORATION**

**(Adopted October 30, 2012)**

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**AMENDED AND RESTATED  
BYLAWS  
OF PERFICIENT, INC.,  
A DELAWARE CORPORATION**

**- OFFICES**

**REGISTERED OFFICE**

. The registered office of the corporation shall be the registered office named in the certificate of incorporation of the corporation, or such other office as may be designated from time to time by the Board of Directors in the manner provided by law.

**OTHER OFFICES**

. The corporation may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. The books of the corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in these Bylaws.

**- CORPORATE SEAL**

**CORPORATE SEAL**

. The corporate seal shall consist of a die bearing the name of the corporation. Said seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced or otherwise.

**- STOCKHOLDERS' MEETINGS**

**PLACE OF MEETINGS**

. Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the principal executive offices of the corporation.

**ANNUAL MEETING.**

The annual meeting of the stockholders of the corporation, for the purpose of election of Directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a

stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) calendar days in advance of the date of the Notice of Annual Meeting released to stockholders in connection with the previous year's annual meeting of stockholders; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's Notice of Annual Meeting, notice by the stockholder to be timely must be so received a reasonable time before the Notice of Annual Meeting is released to stockholders. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business; (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder; (iv) any material interest of the stockholder in such business; and (v) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 ACT"), in such stockholder's capacity as a proponent of a stockholder proposal. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph. The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph, and, if the chairman should so determine, the chairman shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

Only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible for election as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of Directors at the meeting who complies with the notice procedures set forth in this paragraph. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 3.2. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a Director: (A) the name, age, business address and residence address of such person; (B) the principal occupation or employment of such person; (C) the class and number of shares of the corporation which are beneficially owned by such person; (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a Director if elected); and (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (b) of this Section 3.2. At the request of the Board of Directors, any person nominated by a stockholder for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in the

stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a Director of the corporation unless nominated in accordance with the procedures set forth in this paragraph. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if the chairman should so determine, the chairman shall so declare at the meeting, and the defective nomination shall be disregarded.

## **SPECIAL MEETINGS.**

Special meetings of the stockholders of the corporation may only be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the President, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), or (iv) the Secretary in accordance with paragraph (c) below (each, a "Special Meeting Request").

If a special meeting is called pursuant to paragraph (a) above by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the President, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

A special meeting of the stockholders (a "Stockholder Requested Special Meeting") shall be called by the Secretary upon the written request of the stockholders of record having an aggregate "net long position" (as defined below) of at least twenty-five percent (25%) of the outstanding shares of the corporation, and having held such net long position continuously for at least one year, as of the date of such request (the "Required Percentage"), subject to paragraph (d) below. "Net long position" shall be determined with respect to each requesting stockholder in accordance with the definition set forth in Rule 14e-4 under the Exchange Act, provided that (A) for the purposes of such definition, in determining such stockholder's "short position," that reference in such Rule to "the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired" shall be the date of the relevant Special Meeting Request and all dates in the one-year period prior thereto, and the reference to the "the highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the corporation's shares on The Nasdaq Global Select Market on such corresponding date (or, if such date is not a trading

day, the immediately preceding trading day) and (B) the net long position of such stockholder shall be reduced by the number of shares as to which such stockholder does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such stockholder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting stockholders have complied with the requirements of this paragraph (c) and related provisions of these Bylaws shall be determined in good faith by the Board of Directors, which determination shall be conclusive and binding on the corporation and the stockholders.

In order for a Stockholder Requested Special Meeting to be called, one or more requests for a special meeting (each, a “Stockholder Special Meeting Request,” and collectively, the “Stockholder Special Meeting Requests”) must be signed by the Required Percentage of stockholders (or their duly authorized agents) and must be delivered to the Secretary. The Stockholder Special Meeting Requests shall be delivered to the Secretary at the principal executive offices of the corporation by registered mail or by telegraphic or other facsimile transmission. Each Stockholder Special Meeting Request shall (A) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it, (B) bear the date of signature of each such stockholder (or duly authorized agent) signing the Stockholder Special Meeting Request, (C) set forth (i) the name and address, as they appear on the corporation’s books, of each stockholder signing such request (or on whose behalf the Stockholder Special Meeting Request is signed), (ii) the class and the number of shares of the corporation which are owned of record and beneficially by the stockholder, (iii) the number of shares as to which such stockholder does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such stockholder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares and (iv) include documentary evidence of such stockholder’s record and beneficial ownership of such shares, (D) set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act and (E) contain the information required by Section 3.2(b) of these Bylaws. Upon the request of the Board of Directors, any requesting stockholder shall provide such additional information the Board of Directors deems reasonably necessary to determine the requesting stockholder’s compliance with Section 3.3(c) of these Bylaws. Any requesting stockholder may revoke such Stockholder Special Meeting Request at any time by written revocation delivered to the Secretary at the principal executive offices of the corporation, and if, following such revocation, there are un-revoked requests from stockholders holding in the aggregate less than the Required Percentage, the Board of Directors, in its discretion, may cancel the special meeting.

Notwithstanding the foregoing, the Secretary shall not be required to call a Stockholder Requested Special Meeting if (A) the Board of Directors calls an annual or special meeting of stockholders to be held not later than sixty (60) days after the date on which a valid Stockholder Special Meeting Request has been delivered to the Secretary (the “Delivery Date”); or (B) the Stockholder Special Meeting Request (i) is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately

preceding annual meeting and ending on the date of the next annual meeting; (ii) contains an identical or substantially similar item (a “Similar Item”) to an item that was presented at any meeting of stockholders held within twelve (12) months prior to the Delivery Date (and, for purposes of this clause (ii), the election of directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of directors); (iii) relates to an item of business that is not a proper subject for action by the party requesting the special meeting under applicable law; (iv) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (v) does not comply with the provisions of this Section 3.3.

Each Stockholder Requested Special Meeting shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting (the “Meeting Record Date”), which shall be fixed in accordance with Section 7.4 of these Bylaws. Upon determination of the time and place of the meeting, the corporation shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the Delivery Date, then such meeting shall be held at 9:00 a.m. local time on the 60th day after the Meeting Record Date at the corporation’s principal executive offices. In fixing a date and time for any Stockholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request; provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting.

#### NOTICE OF MEETINGS

. Except as otherwise provided by law or the certificate of incorporation of the corporation, as the same may be amended or restated from time to time and including any certificates of designation thereunder (hereinafter, the “CERTIFICATE OF INCORPORATION”), written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date, time and purpose or purposes of the meeting. Notice of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

#### QUORUM

. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the

chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the votes cast, excluding abstentions, at any meeting at which a quorum is present shall be valid and binding upon the corporation, including, without limitation, in the election of directors. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

#### ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS

. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

#### VOTING RIGHTS

. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 3.9 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Elections of Directors need not be by written ballot, unless otherwise provided in the Certificate of Incorporation.

#### JOINT OWNERS OF STOCK

. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; or (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the

Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) shall be a majority or even-split in interest.

#### **LIST OF STOCKHOLDERS**

. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present.

#### **NO ACTION WITHOUT MEETING**

. Effective upon the closing of the corporation's initial public offering (the "Initial Public Offering") of its capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the stockholders of the corporation may not take action by written consent without a meeting and must take any actions at a duly called annual or special meeting.

#### **ORGANIZATION.**

At every meeting of stockholders, unless another officer of the corporation has been appointed by the Board of Directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed, is absent, or designates the next senior officer present to so act, the President, or, if the President is absent, the most senior Vice President present, or, in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.



## **– DIRECTORS**

### **NUMBER AND TERM OF OFFICE; CLASSIFICATION**

. The number of directors which shall constitute the whole Board of Directors shall be determined from time to time by the Board of Directors (provided that no decrease in the number of directors which would have the effect of shortening the term of an incumbent director may be made by the Board of Directors), provided that the number of directors shall be not less than one (1). At each annual meeting of stockholders, Directors of the corporation shall be elected to hold office until the next annual meeting of stockholders or until their successors have been duly elected and qualified or until such Director's earlier death, resignation or due removal; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. Directors need not be stockholders unless so required by the Certificate of Incorporation. If, for any reason, the Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

### **POWERS**

. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

### **VACANCIES AND NEWLY CREATED DIRECTORSHIPS**

. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors, or by a sole remaining Director. Each Director so elected shall hold office for the unexpired portion of the term of the Director whose place shall be vacant and until his or her successor shall have been duly elected and qualified or until such Director's earlier death, resignation or due removal.

### **RESIGNATION**

. Any Director may resign at any time by delivering his or her written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

### **MEETINGS.**

**ANNUAL MEETINGS.** Unless the Board shall determine otherwise, the annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the

Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

**REGULAR MEETINGS.** Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the principal executive offices of the corporation. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

**SPECIAL MEETINGS.** Unless otherwise restricted by the Certificate of Incorporation, and subject to the notice requirements contained herein, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the Directors.

**TELEPHONE MEETINGS.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**NOTICE OF MEETINGS.** Written notice of the time and place of all special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Such notice need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. Notice of any meeting may be waived in writing at any time before or after the meeting and will be deemed waived by any Director by attendance thereat, except when the Director attends the meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**WAIVER OF NOTICE.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after meeting, each of the Directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **QUORUM AND VOTING.**

Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Article XI hereof, for which a quorum shall be one-third of the exact number of Directors fixed from time to time in accordance with Section 4.1 hereof, but not less than one (1), a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 4.1 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum be present or otherwise, a majority of the Directors present may adjourn from time to time until

the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a vote of the majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

#### **ACTION WITHOUT MEETING**

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

#### **FEES AND COMPENSATION**

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

#### **COMMITTEES.**

COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint one or more committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the power or authority to amend the Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

TERM. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of paragraphs (a) and (b) of this Section 4.9 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a

quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**MEETINGS.** Unless the Board of Directors shall otherwise provide, regular meetings of any committee appointed pursuant to this Section 4.9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends such special meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

#### **ORGANIZATION**

. The Chairman of the Board shall preside at every meeting of the Board of Directors, if present. In the case of any meeting, if there is no Chairman of the Board or if the Chairman is not present, the Vice Chairman (if there be one) shall preside, or if there be no Vice Chairman or if the Vice Chairman is not present, a chairman chosen by a majority of the directors present shall act as chairman of such meeting. The Secretary of the corporation or, in the absence of the Secretary, any person appointed by the Chairman shall act as secretary of the meeting.

#### **- OFFICERS**

##### **OFFICERS DESIGNATED**

. The officers of the corporation shall include, if and when designated by the Board of Directors, a Chairman of the Board of Directors, a President, one or more executive and non-executive Vice Presidents (any one or more of which executive Vice Presidents may be designated as Executive Vice President or Senior Vice President or a similar title), a Secretary and a Treasurer. The Board of Directors may, at its discretion, create additional officers and assign such duties to those offices as it may deem appropriate from time to time, which offices may include a Vice Chairman of the Board of Directors, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer one or more Assistant Secretaries and Assistant Treasurers, and one or more other officers which may be created at the discretion of the Board of Directors. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

##### **TENURE AND DUTIES OF OFFICERS.**

GENERAL. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Except for the Chairman of the Board and the Vice Chairman of the Board, no officer need be a director.

CHAIRMAN OF THE BOARD. The Chairman of the Board of Directors, when present, shall preside at all meetings of the Board of Directors and, unless the Chairman has designated the next senior officer to so preside, at all meetings of the stockholders. The Chairman of the Board of Directors shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

VICE CHAIRMAN OF THE BOARD. The Board of Directors may but is not required to assign areas of responsibility to a Vice Chairman of the Board, and, in such event, and subject to the overall direction of the Chairman of the Board and the Board of Directors, the Vice Chairman of the Board shall be responsible for supervising the management of the affairs of the corporation and its subsidiaries within the area or areas assigned and shall monitor and review on behalf of the Board of Directors all functions within such corresponding area or areas of the corporation and each such subsidiary of the corporation. The Vice Chairman of the Board shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to the Vice Chairman of the Board by the Board of Directors or the Chairman of the Board.

CHIEF EXECUTIVE AND CHIEF OPERATING OFFICERS. Subject to the control of the Board of Directors, the chief executive officer shall have general executive charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities; and subject to the control of the chief executive officer, the chief operating officer shall have general operating charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities. The chief executive officer and, if and to the extent designated by the chief executive officer or the Board, the chief operating officer, may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the corporation and may sign all certificates for shares of capital stock of the corporation, and each shall have such other powers and duties as are designated in accordance with these Bylaws and as from time to time may be assigned to each by the Board of Directors.

PRESIDENT. Unless the Board of Directors otherwise determines and subject to the provisions of paragraph (d) above, the President shall be the chief executive officer and chief operating officer of the corporation. Unless the Board of Directors otherwise determines, he shall, in the absence of the Chairman of the Board, or Vice Chairman of the Board, or if there be no Chairman of the Board or Vice Chairman of the Board, preside at all meetings of the stockholders and (should he be a director) of the Board of Directors. The President shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

VICE PRESIDENTS. Vice Presidents, by virtue of their appointment as such, shall not necessarily be deemed to be executive officers of the corporation, such status as an executive officer only being conferred if and to the extent such Vice President is placed in charge of a principal business unit, division or function (E.G., sales, administration or finance) or performs a policy-making function for the corporation (within the meaning of Section 16 of the 1934 Act and the rules and regulations promulgated thereunder). Each executive Vice President shall at all times possess, and, upon the authority of the President or the chief executive officer, any non-executive Vice President shall from time to time possess, power to sign all certificates, contracts and other instruments of the corporation, except as otherwise limited pursuant to Article VI hereof or by the Chairman of the Board, the President, chief executive officer or the Vice Chairman of the Board. Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

SECRETARY. The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of the Board of Directors and the stockholders, in books provided for that purpose; shall attend to the giving and serving of all notices; may in the name of the corporation affix the seal of the corporation to all contracts and attest the affixation of the seal of the corporation thereto; may sign with the other appointed officers all certificates for shares of capital stock of the corporation; and shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the corporation during business hours. The Secretary shall perform all other duties given in these Bylaws and other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors or the President, shall designate from time to time.

ASSISTANT SECRETARIES. Each Assistant Secretary shall have the usual powers and duties pertaining to such offices, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to an Assistant Secretary by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability refusal to act.

TREASURER. The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chairman of the Board, the Vice President of the Board or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Vice Chairman of the Board or the President shall designate from time to time. The Chief Financial Officer of the corporation (if one is appointed) may, but need not, serve as the Treasurer.

ASSISTANT TREASURERS. Each Assistant Treasurer shall have the usual powers and duties pertaining to such office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to each Assistant Treasurer by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Treasurer. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability refusal to act.

#### DELEGATION OF AUTHORITY

. For any reason that the Board of Directors may deem sufficient, the Board of Directors may, except where otherwise provided by statute, delegate the powers or duties of any officer to any other person, and may authorize any officer to delegate specified duties of such office to any other person. Any such delegation or authorization by the Board shall be effected from time to time by resolution of the Board of Directors.

#### RESIGNATIONS

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

#### REMOVAL

. Any officer may be removed from office at any time, either with or without cause, by the vote or written consent of a majority of the Directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

### **- EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION**

#### EXECUTION OF CORPORATE INSTRUMENTS

. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, the President, Chief Executive Officer or any executive Vice President, and upon the authority conferred by the President, Chief Executive Officer, or any non-executive Vice President, and by the Secretary or Chief Financial Officer, if any be designated, or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments

and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so too.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

#### VOTING OF SECURITIES OWNED BY THE CORPORATION

. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman or Vice Chairman of the Board of Directors, Chief Executive Officer, the President, or any Vice President.

### - SHARES OF STOCK

#### FORM AND EXECUTION OF CERTIFICATES

. The shares of capital stock of the corporation may be certificated or uncertificated, as provided under the Delaware General Corporation Law. If certificated, certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman or Vice Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, certifying the number of shares and the class or series owned by him in the corporation. Where such certificate is countersigned by a transfer agent other than the corporation or its employee or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

#### LOST CERTIFICATES

. A new certificate or certificates may be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and



amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

## **TRANSFERS.**

Transfers of record of shares of uncertificated stock of the corporation shall be made upon proper instructions from the holder of uncertificated shares. Transfers of record of shares of stock in the corporation represented by certificates shall be made only on its books by the holders thereof, in person or by attorney duly authorized and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. Upon surrender to the corporation or a transfer agent of the corporation or a transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The Board of Directors shall have the power and authority to make all such other rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the corporation.

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the Delaware General Corporation Law.

## **FIXING RECORD DATES.**

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

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

#### REGISTERED STOCKHOLDERS

. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

### - OTHER SECURITIES OF THE CORPORATION

#### EXECUTION OF OTHER SECURITIES

. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chairman or Vice Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before any bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

### - DIVIDENDS

#### DECLARATION OF DIVIDENDS

. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

#### DIVIDEND RESERVE

. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think

conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

#### **- FISCAL YEAR**

The fiscal year of the corporation shall be the calendar year, unless otherwise fixed by resolution of the Board of Directors.

#### **- INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS**

##### **DIRECTORS AND EXECUTIVE OFFICERS**

. The corporation shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; PROVIDED, HOWEVER, that the corporation may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, PROVIDED, FURTHER, that the corporation shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law.

##### **OTHER OFFICERS, EMPLOYEES AND OTHER AGENTS**

. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

##### **GOOD FAITH.**

For purposes of any determination under this Article XI, a Director or executive officer shall be deemed to have acted in good faith and in a manner such officer reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that such officer's conduct was unlawful, if such officer's action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:

one or more officers or employees of the corporation whom the Director or executive officer believed to be reliable and competent in the matters presented;

counsel, independent accountants or other persons as to matters which the Director or executive officer believed to be within such person's professional competence; and

with respect to a Director, a committee of the Board upon which such Director does not serve, as to matters within such committee's designated authority, which

committee the Director believes to merit confidence; so long as, in each case, the Director or executive officer acts without knowledge that would cause such reliance to be unwarranted.

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

The provisions of this Section 11.3 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

#### EXPENSES

. The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article XI or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 11.5 of this Article XI, no advance shall be made by the corporation if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

#### ENFORCEMENT

. Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Article XI shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the Director or executive officer. Any right to indemnification or advances granted by this Article XI to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall also be entitled to be paid the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of

Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

#### NON-EXCLUSIVITY OF RIGHTS

. The rights conferred on any person by this Article XI shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

#### SURVIVAL OF RIGHTS

. The rights conferred on any person by this Article XI shall continue as to a person who has ceased to be a Director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### INSURANCE

. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article XI.

#### AMENDMENTS

. Any repeal or modification of this Article XI shall only be prospective and shall not affect the rights under this Article XI in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

#### SAVINGS CLAUSE

. If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Director and executive officer to the full extent not prohibited by any applicable portion of this Article XI that shall not have been invalidated, or by any other applicable law.

#### CERTAIN DEFINITIONS

. For the purposes of this Article XI, the following definitions shall apply:

The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article XI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

References to a “director,” “officer,” “employee,” or “agent” of the corporation shall include without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Article XI.

## **- NOTICES**

### **NOTICE TO STOCKHOLDERS**

. Unless the Certificate of Incorporation requires otherwise, whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to such stockholder’s last known post office address as shown by the stock record of the corporation or its transfer agent.

### **NOTICE TO DIRECTORS**

. Any notice required to be given to any Director may be given by the method stated in Section 12.1, or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such Director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such Director. It shall not be necessary that the same method of giving notice be employed in respect of all Directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

### **ADDRESS UNKNOWN**

. If no address of a stockholder or Director be known, notice may be sent to the principal executive officer of the corporation.

#### AFFIDAVIT OF MAILING

. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or Director or Directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

#### TIME NOTICES DEEMED GIVEN

. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at the time of transmission.

#### FAILURE TO RECEIVE NOTICE

. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any Director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent such person in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such Director to receive such notice.

#### NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

#### NOTICE TO PERSON WITH UNDELIVERABLE ADDRESS

. Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at such person's address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

## **- AMENDMENTS**

### **AMENDMENTS**

. Except as otherwise set forth in Section 11.9 of these Bylaws, these Bylaws may be amended or repealed and new Bylaws adopted by the Board of Directors or by the stockholders entitled to vote.

### **APPLICATION OF BYLAWS**

. In the event that any provisions of these Bylaws is or may be in conflict with any law of the United States, of the state of incorporation of the corporation or of any other governmental body or power having jurisdiction over this corporation, or over the subject matter to which such provision of these Bylaws applies, or may apply, such provision of these Bylaws shall be inoperative to the extent only that the operation thereof unavoidably conflicts with such law, and shall in all other respects be in full force and effect.

## **- LOANS TO OFFICERS**

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this Bylaw shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under statute.

## **- ANNUAL REPORT**

At such time as the corporation becomes subject to the reporting requirements of Rules 12(b) and 15(d) of the Securities Exchange Act of 1934, the Board of Directors shall cause an annual report to be sent to each stockholder of the corporation not later than one hundred twenty (120) days after the close of the corporation's fiscal year. Such report shall include a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, accompanied by any report thereon of independent accounts or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. Such report shall be sent to stockholders at least fifteen (15) days prior to the next annual meeting of stockholders after the end of the fiscal year to which it relates. If and so long as there are fewer than 100 holders of record of the corporation's shares, the requirement of sending of an annual report to the stockholders of the corporation is hereby expressly waived.