

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

**FORM 8-K**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): May 14, 2020

**Infrastructure and Energy Alternatives, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-37796**  
(Commission File Number)

**47-4787177**  
(IRS Employer  
Identification No.)

**6325 Digital Way  
Suite 460  
Indianapolis, Indiana**  
(Address of Principal Executive Offices)

**46278**  
(Zip Code)

Registrant's telephone number, including area code: **(765) 828-2580**

**None.**  
(Former Name or Former Address, if Changed Since Last Report)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbols(s)</u>	<u>Name of exchange on which registered</u>
Common Stock, \$0.0001 par value	IEA	The NASDAQ Stock Market LLC
Warrants for Common Stock	IEAWW	The NASDAQ Stock Market LLC

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

On May 14, 2020, the Compensation Committee (the “Committee”) of the Board of Directors of Infrastructure and Energy Alternatives, Inc., a Delaware corporation (the “Company”), adopted a form of Performance Based Restricted Stock Unit Award Agreement (2020 Grants) (the “Performance RSU Agreement (2020 Grants)”) to be used by the Company in 2020 in making grants of performance based restricted stock units (“RSUs”) to certain officers, directors and employees under the Company’s 2018 Equity Incentive Plan, as amended from time to time (the “Equity Plan”). Pursuant to the 2020 Performance RSU Agreement (2020 Grants), if the vesting thresholds are met, and depending upon the threshold, a minimum of 40%, and a maximum of 160%, of the RSUs subject to the award will become subject to vesting. After the number of RSUs that may become subject to vesting is determined, such number of RSUs will vest equally in one third increments on each one, two and three year anniversary of the date of grant, or such other date determined by the Committee, subject to the terms of the Performance RSU Agreement (2020 Grants).

The foregoing summary of the Performance RSU Agreement (2020 Grants) does not purport to be complete and is qualified in its entirety by reference to the full text of the Performance RSU Agreement (2020 Grants), which is filed herewith as Exhibit 10.1, and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
10.1	<a href="#"><u>Form of Amended and Restated Performance Based Restricted Stock Unit Award Agreement (2020 Grants)</u></a>

**SIGNATURE**

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

Dated: May 19, 2020

INFRASTRUCTURE AND ENERGY ALTERNATIVES, INC.

By:     /s/ Gil Melman    

Name: Gil Melman

Title: Executive Vice President, General Counsel and Corporate Secretary

**INFRASTRUCTURE AND ENERGY ALTERNATIVES, INC.**  
**AMENDED AND RESTATED**  
**2018 EQUITY INCENTIVE PLAN**  
**PERFORMANCE BASED**  
**RESTRICTED STOCK UNIT AWARD AGREEMENT**  
**(2020 Grants)**

THIS RESTRICTED STOCK UNIT AWARD AGREEMENT (this "Agreement"), is entered into as of [\_\_\_\_], 20[\_\_\_] (the "Date of Grant"), by and between Infrastructure and Energy Alternatives, Inc. a Delaware corporation (the "Company"), and [\_\_\_\_] (the "Participant").

Capitalized terms used in this Agreement and not otherwise defined herein have the meanings ascribed to such terms in the Infrastructure and Energy Alternatives, Inc. 2018 Equity Incentive Plan as amended, restated or otherwise modified from time to time in accordance with its terms (the "Plan").

WHEREAS, the Company has adopted the Plan, pursuant to which performance based restricted stock units ("RSUs") may be granted; and

WHEREAS, the Board of Directors has determined that it is in the best interests of the Company and its stockholders to grant the RSUs provided for herein to the Participant on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the covenants of the parties contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

**1. Grant of Restricted Stock Units.**

(a) Grant. The Company hereby grants to the Participant [\_\_\_\_] RSUs, on the terms and subject to the conditions set forth in this Agreement and as otherwise provided in the Plan. The RSUs shall be credited to a separate book-entry account maintained for the Participant on the books of the Company.

(b) Incorporation by Reference. The provisions of the Plan are incorporated herein by reference. Except as otherwise expressly set forth herein, this Agreement shall be construed in accordance with the provisions of the Plan and any interpretations, amendments, rules and regulations promulgated by the Committee from time to time pursuant to the Plan. The Committee shall have final authority to interpret and construe the Plan and this Agreement and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Participant and the Participant's beneficiary in respect of any questions arising under the Plan or this Agreement. The Participant acknowledges that the Participant has received a copy of the Plan and has had an opportunity to review the Plan and agrees to be bound by all the terms and provisions of the Plan.

**2. Vesting; Settlement.**

(a) Vesting. The RSUs shall vest as provided on **Exhibit A**; provided, that, except as may otherwise be provided herein, such vesting is subject to the Participant's continued employment with, appointment as a director of, or engagement to provide services to, the Company or an Affiliate on the applicable vesting date (any date on which RSUs vest, a "Vesting Date").

(b) Upon vesting, the RSUs shall no longer be subject to the transfer restrictions pursuant to Section 14(b) of the Plan or cancellation pursuant to Section 4 hereof.

(c) Each RSU shall be settled within fifteen (15) days following the Vesting Date in shares of Common Stock.

3. **Dividend Equivalents.** In the event of any issuance of a cash dividend on the shares of Common Stock (a “Dividend”), the Participant shall be credited, as of the payment date for such Dividend, with an additional number of RSUs (each, an “Additional RSU”) equal to the quotient obtained by dividing (x) the product of (i) the number of RSUs granted pursuant to this Agreement and outstanding as of the record date for such Dividend multiplied by (ii) the amount of the Dividend per share, by (y) the Fair Market Value per share on the payment date for such Dividend, such quotient to be rounded to the nearest hundredth. Once credited, each Additional RSU shall be treated as an RSU granted hereunder and shall be subject to all terms and conditions set forth in this Agreement and the Plan.

4. **Termination of Employment or Services.** Except as set forth herein, if the Participant’s employment with, membership on the board of directors of, or engagement to provide services to, the Company or any of its Affiliates terminates for any reason, all unvested RSUs shall be canceled immediately and the Participant shall not be entitled to receive any payments with respect thereto.

5. **Rights as a Stockholder.** The Participant shall not be deemed for any purpose to be the owner of any shares of Common Stock underlying the RSUs unless, until and to the extent that (i) the Company shall have issued and delivered to the Participant the shares of Common Stock underlying the RSUs and (ii) the Participant’s name shall have been entered as a stockholder of record with respect to such shares of Common Stock on the books of the Company. The Company shall cause the actions described in clauses (i) and (ii) of the preceding sentence to occur promptly following settlement as contemplated by this Agreement, subject to compliance with applicable laws.

#### 6. **Compliance with Legal Requirements.**

(a) Generally. The granting and settlement of the RSUs, and any other obligations of the Company under this Agreement, shall be subject to all applicable U.S. federal, state and local laws, rules and regulations, all applicable non-U.S. laws, rules and regulations and to such approvals by any regulatory or governmental agency as may be required. The Participant agrees to take all steps that the Committee or the Company determines are reasonably necessary to comply with all applicable provisions of U.S. federal and state securities law and non-U.S. securities law in exercising the Participant’s rights under this Agreement.

(b) Tax Withholding. The vesting and settlement of the RSUs shall be subject to the Participant satisfying any applicable U.S. federal, state and local tax withholding obligations and non-U.S. tax withholding obligations. The Participant shall be responsible for all income taxes payable in respect of the RSUs. Upon the settlement of the RSUs, the Participant shall be required to pay to the Company, and the Company shall have the right and is hereby authorized to withhold any cash, shares of Common Stock, other securities or other property deliverable under the RSUs or from any compensation or other amounts owing to a Participant, the amount (in cash, shares of Common Stock, other securities or other property) of any required withholding taxes in respect of the RSUs, and to take such other action as may be necessary in the opinion of the Committee to satisfy all obligations for the payment of such withholding taxes, if applicable. In addition, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing withholding liability by (A) the delivery of shares of Common Stock (which are not subject to any pledge or other security interest and which would not result in adverse accounting to the Company) owned by the Participant having a Fair Market Value equal to such withholding liability or (B) having the Company

withhold from the number of shares of Common Stock otherwise issuable or deliverable pursuant to the settlement of RSUs a number of shares of Common Stock with a Fair Market Value equal to such withholding liability. The obligations of the Company under this Agreement shall be conditional on such payment or arrangements, and the Company will, to the extent permitted by law, have the right to deduct any such withholding taxes from any payment of any kind otherwise due to Participant.

7. **Clawback.** Notwithstanding anything to the contrary contained herein, the Committee may cancel the RSU award if the Participant, without the consent of the Company, has engaged in or engages in activity that is in conflict with or adverse to the interest of the Company or any Affiliate while employed by, serving as a director of, or otherwise providing services to, the Company or any Affiliate, including fraud or conduct contributing to any financial restatements or irregularities, or violates the covenants set forth on **Exhibit B** attached hereto or any other non-competition, non-solicitation, non-disparagement or non-disclosure covenant or agreement with the Company or any Affiliate (after giving effect to any applicable cure period set forth therein), as determined by the Committee. In such event, the Participant will forfeit any compensation, gain or other value realizable or realized thereafter on the vesting or settlement of the RSUs, the sale or other transfer of the RSUs (if permitted), or the sale of shares of Common Stock acquired in respect of the RSUs, and must promptly repay such amounts to the Company. If the Participant receives any amount in excess of what the Participant should have received under the terms of the RSUs for any reason (including without limitation by reason of a financial restatement, mistake in calculations or other administrative error), all as determined by the Committee, then the Participant shall be required to promptly repay any such excess amount to the Company. To the extent required by applicable law and/or the rules and regulations of the NASDAQ or any other securities exchange or inter-dealer quotation system on which the Common Stock is listed or quoted, or if so required pursuant to a written policy adopted by the Company, the RSUs shall be subject (including on a retroactive basis) to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into this Agreement).

#### 8. Restrictive Covenants.

(a) *If the Participant is subject to non-competition, non-solicitation, non-disparagement or non-disclosure or other similar provisions pursuant to his or her employment agreement with the Company, such provisions shall control in lieu of the corresponding provisions in Exhibit B.* In the event Participant has no employment agreement, or his or her employment agreement does not contain non-competition, non-solicitation, non-disparagement or non-disclosure provisions, the Participant shall be subject to the applicable non-competition, non-solicitation, non-disparagement or non-disclosure provisions set forth on **Exhibit B** attached hereto. All remaining provision of **Exhibit B** shall be applicable to all Participants.

(b) In the event that the Participant violates any of the restrictive covenants referred to in this Section 8, in addition to any other remedy that may be available at law or in equity, the RSUs shall be automatically forfeited effective as of the date on which such violation first occurs. The foregoing rights and remedies are in addition to any other rights and remedies that may be available to the Company and shall not prevent (and the Participant shall not assert that they shall prevent) the Company from bringing one or more actions in any applicable jurisdiction to recover damages as a result of the Participant's breach of such restrictive covenants.

#### 9. Miscellaneous.

(a) Transferability. The RSUs may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered (a "Transfer") by the Participant other than by will or by the laws of descent and distribution, pursuant to a qualified domestic relations order or as otherwise permitted under Section 14(b)

of the Plan. Any attempted Transfer of the RSUs contrary to the provisions hereof, and the levy of any execution, attachment or similar process upon the RSUs, shall be null and void and without effect.

(b) Waiver. Any right of the Company contained in this Agreement may be waived in writing by the Committee. No waiver of any right hereunder by any party shall operate as a waiver of any other right, or as a waiver of the same right with respect to any subsequent occasion for its exercise, or as a waiver of any right to damages. No waiver by any party of any breach of this Agreement shall be held to constitute a waiver of any other breach or a waiver of the continuation of the same breach.

(c) Section 409A. The RSUs are intended to be exempt from, or compliant with, Section 409A of the Code. Notwithstanding the foregoing or any provision of the Plan or this Agreement, if any provision of the Plan or this Agreement contravenes Section 409A of the Code or could cause the Participant to incur any tax, interest or penalties under Section 409A of the Code, the Committee may, in its sole discretion and without the Participant's consent, modify such provision to (i) comply with, or avoid being subject to, Section 409A of the Code, or to avoid the incurrence of taxes, interest and penalties under Section 409A of the Code, and/or (ii) maintain, to the maximum extent practicable, the original intent and economic benefit to the Participant of the applicable provision without materially increasing the cost to the Company or contravening the provisions of Section 409A of the Code. This Section 9(c) does not create an obligation on the part of the Company to modify the Plan or this Agreement and does not guarantee that the RSUs will not be subject to interest and penalties under Section 409A.

(d) General Assets. All amounts credited in respect of the RSUs to the book-entry account under this Agreement shall continue for all purposes to be part of the general assets of the Company. The Participant's interest in such account shall make the Participant only a general, unsecured creditor of the Company.

(e) Notices. Any notices provided for in this Agreement or the Plan shall be in writing and shall be deemed sufficiently given if either hand delivered or if sent by fax, pdf/email or overnight courier, or by postage-paid first-class mail. Notices sent by mail shall be deemed received three (3) business days after mailing but in no event later than the date of actual receipt. Notices shall be directed, if to the Participant, at the Participant's address indicated by the Company's records, or if to the Company, to the attention of the General Counsel and to the Head of Human Resources at the Company's principal executive office.

(f) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(g) No Rights to Employment, Directorship, or Service. Nothing contained in this Agreement shall be construed as giving the Participant any right to be retained, in any position, as an employee, consultant or director of the Company or its Affiliates or shall interfere with or restrict in any way the rights of the Company or its Affiliates, which are hereby expressly reserved, to remove, terminate or discharge the Participant at any time for any reason whatsoever.

(h) Fractional Shares. In lieu of issuing a fraction of a share of Common Stock resulting from adjustment of the RSUs pursuant to Section 11 of the Plan or otherwise, the Company shall be entitled to pay to the Participant an amount in cash equal to the Fair Market Value of such fractional share.

(i) Beneficiary. The Participant may file with the Committee a written designation of a beneficiary on such form as may be prescribed by the Committee and may, from time to time, amend or revoke such designation.

(j) Successors. The terms of this Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and of the Participant and the beneficiaries, executors, administrators, heirs and successors of the Participant.

(k) Entire Agreement. This Agreement (including Exhibit A and the applicable provisions of Exhibit B) and the Plan contain the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein and supersede all prior communications, representations and negotiations in respect thereto (other than any other non-competition, non-solicitation, non-disparagement or non-disclosure or other similar provision to which the Participant may be a party and that applies in lieu of Exhibit B in accordance with the terms of this Agreement). No change, modification or waiver of any provision of this Agreement shall be valid unless the same be in writing and signed by the parties hereto, except for any changes permitted without consent under Section 11 or 13 of the Plan.

(l) Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, without regard to principles of conflicts of laws thereof, or principles of conflicts of laws of any other jurisdiction that could cause the application of the laws of any jurisdiction other than the State of Delaware.

(i) Dispute Resolution; Consent to Jurisdiction. All disputes between or among any Persons arising out of or in any way connected with the Plan, this Agreement or the RSUs shall be solely and finally settled by the Committee, acting in good faith, the determination of which shall be final. Any matters not covered by the preceding sentence shall be solely and finally settled in accordance with the Plan, and the Participant and the Company consent to the personal jurisdiction of the United States federal and state courts sitting in Wilmington, Delaware, as the exclusive jurisdiction with respect to matters arising out of or related to the enforcement of the Committee's determinations and resolution of matters, if any, related to the Plan or this Agreement not required to be resolved by the Committee. Each such Person hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the last known address of such Person, such service to become effective ten (10) days after such mailing.

(ii) Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated (whether based on contract, tort or any other theory). Each party hereto (A) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (B) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this section.

(m) Headings. The headings of the Sections hereof are provided for convenience only and are not to serve as a basis for interpretation or construction, and shall not constitute a part, of this Agreement.

(n) Counterparts. This Agreement may be executed in one or more counterparts (including via facsimile and electronic image scan (pdf)), each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

(o) Electronic Signature and Delivery. This Agreement may be accepted by return signature or by electronic confirmation. By accepting this Agreement, the Participant consents to the electronic delivery of prospectuses, annual reports and other information required to be delivered by U.S. Securities and Exchange Commission rules (which consent may be revoked in writing by the Participant at any time upon three (3)

business days' notice to the Company, in which case subsequent prospectuses, annual reports and other information will be delivered in hard copy to the Participant).

(p) Electronic Participation in Plan. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

*[Remainder of page intentionally blank]*

IN WITNESS WHEREOF, this Restricted Stock Unit Award Agreement has been executed by the Company and the Participant as of the day first written above.

INFRASTRUCTURE AND ENERGY ALTERNATIVES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
[PARTICIPANT]

## **Exhibit A**

**Performance Criteria:** The number of RSUs that may vest shall be determined based upon actual Adjusted EBITDA for fiscal year 2020 (the “Performance Period”) relative to the Board approved Company Adjusted EBITDA goal on a consolidated basis (“Target Adjusted EBITDA”). Adjusted EBITDA for purposes of determining the number of RSUs that may become subject to vesting shall be calculated on the same basis as disclosed in the Company’s filings with the Securities and Exchange Commission. The Company’s audited annual financial statements, on a consolidated basis, will be used to determine relative achievement of Target Adjusted EBITDA. Following the end of the Performance Period and after the outside auditors have completed their annual audit of the Company’s consolidated financial statements, the Committee shall determine the number of RSUs that may become subject to vesting by comparing achievement of actual Adjusted EBITDA relative to Target Adjusted EBITDA as follows:

<b>Actual Adjusted EBITDA</b>	<b>Vesting Percentage</b>
80% of Target Adjusted EBITDA (threshold vesting)	40 %
90% of Target Adjusted EBITDA	60 %
100% of Target Adjusted EBITDA	100 %
110% of Target Adjusted EBITDA	110 %
120% of Target Adjusted EBITDA	120 %
130% of Target Adjusted EBITDA	140 %
140% of Target Adjusted EBITDA (maximum vesting)	160 %

If actual Adjusted EBITDA is lower than eighty percent (80%) of Target Adjusted EBITDA, no RSUs will be subject to vesting and all such RSUs shall be cancelled immediately. If actual Adjusted EBITDA results in less than the full number of RSUs becoming subject to vesting, such excess RSUs shall be cancelled immediately. No additional RSUs shall be subject to vesting if actual Adjusted EBITDA is beyond one hundred and forty percent (140%) of Target Adjusted EBITDA. Linear interpolation will be used to determine the amount of RSUs subject to vesting for actual Adjusted EBITDA and between the threshold and maximum.

**Vesting:** Following the determination of the number of RSUs that are subject to vesting, such RSUs shall vest as follows:

<b>Date</b>	<b>Vesting Amount</b>
First Anniversary of March 26, 2020 (or such other date determined by the Committee)	1/3
Second Anniversary of March 26, 2020 2020 (or such other date determined by the Committee)	1/3
Third Anniversary of March 26, 2020 2020 (or such other date determined by the Committee)	1/3

## Exhibit B

**The non-competition, non-solicitation, non-disparagement or non-disclosure provisions of this Exhibit B shall only apply in the event Participant has no employment agreement, or his or her employment agreement does not contain non-competition, non-solicitation, non-disparagement or non-disclosure provisions. All remaining provision of Exhibit B shall be applicable to all Participants.**

1. Non-competition and Non-solicitation. For purposes of this Exhibit, references to the Company shall include its subsidiaries and Affiliates and references to the Agreement shall refer to the Restricted Stock Unit Agreement to which this Exhibit is attached, provided that section references herein shall refer to sections in this Exhibit.

(a) Participant agrees that Participant shall not, while an employee of the Company and during the twelve (12) month period following termination of employment (such collective duration, the "Restriction Period"), directly or indirectly, without the prior written consent of the Company:

(i) (A) engage in activities or businesses (including without limitation by owning any interest in, managing, controlling, participating in, consulting with, advising, rendering services for, or in any manner engaging in the business of owning, operating or managing any business) anywhere in the United States or other countries outside the United States in which the Company does business, that are principally or primarily engaged in any business or activity that competes with any of the businesses of the Company or any of its subsidiaries or controlled affiliates or any entity owned by the Company ("Competitive Activities") or (B) assisting any Person in any way to do, or attempt to do, anything prohibited by this Section 1(a)(i)(A) above; or

(ii) perform any action, activity or course of conduct which is substantially detrimental to the businesses or business reputations of the Company and involves (A) soliciting, recruiting or hiring (or attempting to solicit, recruit or hire) any employees of the Company or Persons who have worked for the Company during the twelve (12) month period immediately preceding such solicitation, recruitment or hiring or attempt thereof; (B) soliciting or encouraging (or attempting to solicit or encourage) any employee of the Company to leave the employment of the Company; (C) intentionally interfering with the relationship of the Company with any Person who or which is employed by or otherwise engaged to perform services for, or any customer, client, supplier, licensee, licensor or other business relation of, the Company; or (D) assisting any Person in any way to do, or attempt to do, anything prohibited by Section 1(a)(ii)(A), (B) or (C) above.

The Restriction Period shall be tolled during (and shall be deemed automatically extended by) any period in which Participant is in violation of the provisions of this Section 1(a) unless provided below.

(b) The provisions of Section 1(a) shall not be deemed breached as a result of Participant's passive ownership of less than an aggregate of three percent (3%) of any class of securities of a Person engaged, directly or indirectly, in Competitive Activities, so long as Participant does not actively participate in the business of such Person; provided, however, that such stock is listed on a national securities exchange (for the sake of clarity, Participant shall remain bound by the other restrictive covenants in this Agreement, including but not limited to Section 2 hereof).

(c) Without limiting the generality of Section 7, notwithstanding the fact that any provision of this Section 1 is determined not to be specifically enforceable, the Company may nevertheless be entitled to recover monetary damages as a result of Participant's material breach of such provision.

(d) Participant acknowledges that the Company has a legitimate business interest and right in protecting its Confidential Information (as defined below), business strategies, employee and customer relationships and goodwill, and that the Company would be seriously damaged by the disclosure of Confidential Information and the loss or deterioration of its business strategies, employee and customer relationships and goodwill. Participant acknowledges that Participant is being provided with significant additional consideration (to which Participant is not otherwise entitled), including restricted stock units, to induce Participant to enter into this Agreement. Participant expressly acknowledges and agrees that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area. Participant further acknowledges that although Participant's compliance with the covenants contained in Sections 1, 2, 3, 4 and 5 may prevent Participant from earning a livelihood in a business similar to the business of the Company, Participant's experience and capabilities are such that Participant has other opportunities to earn a livelihood and adequate means of support for Participant and Participant's dependents.

## 2. Nondisclosure of Confidential Information.

(a) Participant acknowledges that Participant is and shall become familiar with the Company's Confidential Information (as defined below), including trade secrets, and that Participant's services are of special, unique and extraordinary value to the Company. Participant acknowledges that the Confidential Information obtained by Participant while employed by the Company is the property of the Company. Therefore, Participant agrees that Participant shall not disclose to any unauthorized Person or use for Participant's own purposes any Confidential Information without the prior written consent of the Company, unless and to the extent that the aforementioned matters become generally known to and available for use by the public other than as a result of Participant's acts or omissions in violation of this Agreement; provided, however, that if Participant receives a request to disclose Confidential Information pursuant to a deposition, interrogatory, request for information or documents in legal proceedings, subpoena, civil investigative demand, governmental or regulatory process or similar process, to the extent permitted by law, (i) Participant shall promptly notify in writing the Company, and consult with and assist the Company in seeking a protective order or request for other appropriate remedy, (ii) in the event that such protective order or remedy is not obtained, or if the Company waives compliance with the terms hereof, Participant shall disclose only that portion of the Confidential Information which, in the written opinion of Participant's legal counsel, is legally required to be disclosed and shall exercise reasonable best efforts to provide that the receiving Person shall agree to treat such Confidential Information as confidential to the extent possible (and permitted under applicable law) in respect of the applicable proceeding or process and (iii) the Company shall be given an opportunity to review the Confidential Information prior to disclosure thereof.

(b) For purposes of this Agreement, "Confidential Information" means information, observations and data concerning the business or affairs of the Company, including, without limitation, all business information (whether or not in written form) which relates to the Company, or its customers, suppliers or contractors or any other third parties in respect of which the Company has a business relationship or owes a duty of confidentiality, or their respective businesses or products, and which is not known to the public generally other than as a result of Participant's breach of this Agreement, including but not limited to: technical information or reports; formulas; trade secrets; unwritten knowledge and "know-how"; operating instructions; training manuals; customer lists; customer buying records and habits; product sales records and documents, and product development, marketing and sales strategies; market surveys; marketing plans; profitability analyses; product cost; long-range plans; information relating to pricing, competitive strategies and new product development; information relating to any forms of compensation or other personnel-related information; contracts; and supplier lists. Confidential Information will not include such information known

to Participant prior to Participant's involvement with the Company or information rightfully obtained from a third party (other than pursuant to a breach by Participant of this Agreement). Without limiting the foregoing, Participant agrees to keep confidential the existence of, and any information concerning, any dispute between Participant and the Company, except that Participant may disclose information concerning such dispute to his immediate family, to the court that is considering such dispute or to Participant's legal counsel and other professional advisors (provided that such counsel and other advisors agree not to disclose any such information other than as necessary to the prosecution or defense of such dispute).

(c) Participant further agrees that Participant will not improperly use or disclose any confidential information or trade secrets, if any, of any former employers or any other Person to whom Participant has an obligation of confidentiality, and will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other Person to whom Participant has an obligation of confidentiality unless consented to in writing by the former employer or other Person.

(d) Notwithstanding anything herein to the contrary, nothing in this Agreement shall (i) prohibit the Participant from making reports of possible violations of federal law or regulations to any governmental agency or entity in accordance with the provisions of and the rules promulgated under Section 21F of the Exchange Act or Section 806 of the Sarbanes-Oxley Act of 2002, or of any other whistleblower protection provisions of state or federal law or regulations, or (ii) require notification or prior approval by the Company of any reporting described in clause (i).

3. Return of Property. Participant acknowledges that all notes, memoranda, specifications, devices, formulas, records, files, lists, drawings, documents, models, equipment, property, computer, software or intellectual property relating to the businesses of the Company, in whatever form (including electronic), and all copies thereof, that are received or created by Participant while an employee of the Company or its subsidiaries or Affiliates (including but not limited to Confidential Information and Inventions (as defined below)) are and shall remain the property of the Company, and Participant shall immediately return such property to the Company upon the termination of Participant's employment and, in any event, at the Company's request. Participant further agrees that any property situated on the premises of, and owned by, the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company's personnel at any time with or without notice.

#### 4. Intellectual Property Rights.

(a) Participant agrees that the results and proceeds of Participant's services for the Company (including, but not limited to, any trade secrets, products, services, processes, know-how, designs, developments, innovations, analyses, drawings, reports, techniques, formulas, methods, developmental or experimental work, improvements, discoveries, inventions, ideas, source and object codes, programs, matters of a literary, musical, dramatic or otherwise creative nature, writings and other works of authorship) resulting from services performed while an employee of the Company and any works in progress, whether or not patentable or registrable under copyright or similar statutes, that were made, developed, conceived or reduced to practice or learned by Participant, either alone or jointly with others (collectively, "Inventions"), shall be works-made-for-hire and the Company shall be deemed the sole owner throughout the universe of any and all trade secret, patent, copyright and other intellectual property rights (collectively, "Proprietary Rights") of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed, with the right to use the same in perpetuity in any manner the Company determines in its sole discretion, without any further payment to Participant whatsoever. If, for any reason, any of such results and proceeds shall not legally be a work-made-for-hire and/or there are any Proprietary Rights which do not accrue to the Company under the immediately preceding sentence, then Participant hereby irrevocably assigns

and agrees to assign any and all of Participant's right, title and interest thereto, including any and all Proprietary Rights of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed, to the Company, and the Company shall have the right to use the same in perpetuity throughout the universe in any manner determined by the Company without any further payment to Participant whatsoever. As to any Invention that Participant is required to assign, Participant shall promptly and fully disclose to the Company all information known to Participant concerning such Invention.

(b) Participant agrees that, from time to time, as may be requested by the Company and at the Company's sole cost and expense, Participant shall do any and all things that the Company may reasonably deem useful or desirable to establish or document the Company's exclusive ownership throughout the United States of America or any other country of any and all Proprietary Rights in any such Inventions, including the execution of appropriate copyright and/or patent applications or assignments. To the extent Participant has any Proprietary Rights in the Inventions that cannot be assigned in the manner described above, Participant unconditionally and irrevocably waives the enforcement of such Proprietary Rights. This Section 4(b) is subject to and shall not be deemed to limit, restrict or constitute any waiver by the Company of any Proprietary Rights of ownership to which the Company may be entitled by operation of law by virtue of the Company's being Participant's employer. Participant further agrees that, from time to time, as may be requested by the Company and at the Company's sole cost and expense, Participant shall assist the Company in every proper and lawful way to obtain and from time to time enforce Proprietary Rights relating to Inventions in any and all countries. Participant shall execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such Proprietary Rights and the assignment thereof. In addition, Participant shall execute, verify and deliver assignments of such Proprietary Rights to the Company or its designees. Participant's obligations under this Section 4 shall continue beyond the termination of Participant's employment with the Company.

(c) Participant hereby waives and quitclaims to the Company any and all claims, of any nature whatsoever, that Participant now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

5. Nondisparagement. Participant shall not, whether in writing or orally, malign, denigrate or disparage the Company or its predecessors and successors, or any of the current or former directors, officers, employees, shareholders, partners, members, agents or representatives of any of the foregoing, with respect to any of their respective past or present activities, or otherwise publish (whether in writing or orally) statements that tend to portray any of the aforementioned parties in an unfavorable light; provided that nothing herein shall or shall be deemed to prevent or impair Participant from, in the course of and consistent with his duties for the Company, making public comments which include good faith, candid discussions, or acknowledgements regarding the Company's performance or business, or discussing other officers, directors, and employees in connection with normal performance evaluations, or otherwise testifying truthfully in any legal or administrative proceeding where such testimony is compelled, or requested or from otherwise complying with legal requirements.

6. Notification of Subsequent Employer. Participant hereby agrees that prior to accepting employment with, or agreeing to provide services to, any other Person during any period during which Participant remains subject to any of the covenants set forth in Section 1, Participant shall provide such prospective employer with written notice of such provisions of this Agreement, with a copy of such notice delivered simultaneously to the Company.

7. Remedies and Injunctive Relief. Participant acknowledges that a violation by Participant of any of the covenants contained in Section 1, 2, 3, 4 or 5 would cause irreparable damage to the Company in an amount that would be material but not readily ascertainable, and that any remedy at law (including the payment of damages) would be inadequate. Accordingly, Participant agrees that, notwithstanding any provision of this Agreement to the contrary, the Company shall be entitled (without the necessity of showing economic loss or other actual damage) to injunctive relief (including temporary restraining orders, preliminary injunctions and/or permanent injunctions) in any court of competent jurisdiction for any actual or threatened breach of any of the covenants set forth in Section 1, 2, 3, 4 or 5 in addition to any other legal or equitable remedies it may have. The preceding sentence shall not be construed as a waiver of the rights that the Company may have for damages under this Agreement or otherwise, and all of the Company's rights shall be unrestricted.