

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): July 22, 2009

ORION ENERGY SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Wisconsin  
  
(State or other  
jurisdiction of  
incorporation)

01-33887  
  
(Commission File  
Number)

39-1847269  
  
(IRS Employer  
Identification No.)

2210 Woodland Drive, Manitowoc, WI 54220

(Address of principal executive offices, including zip code)

(920) 892-9340

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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

- 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))

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

- (a) Not applicable.  
(b) The disclosure provided under Item 5.02(c) below is incorporated by reference.

(c) Effective July 22, 2009 (the "Effective Date"), the Board of Directors (the "Board") of Orion Energy Systems, Inc. ("Orion") appointed James R. Kackley as Orion's new President and Chief Operating Officer. Mr. Kackley will assume the role of President currently held by Neal R. Verfuert, Orion's founder and Chief Executive Officer, and the title of Chief Operating Officer currently held by Erik G. Birkerts. Mr. Verfuert will continue to serve as Chief Executive Officer of Orion and Mr. Birkerts will become an Executive Vice President of Orion. Mr. Kackley will continue to serve as a director of Orion, but because he will now be an employee-director instead of an independent director, as required by Nasdaq's corporate governance rules, he has stepped down as a member and the chairman of Orion's Audit and Finance Committee and as a member of Orion's Nominating and Corporate Governance Committee as of the Effective Date. Russell Flaum, a current independent director of Orion, will serve as the chairman of Orion's Audit and Finance Committee and Mark Williamson, who just recently joined Orion's Board as an independent director, will serve on Orion's Compensation Committee and its Governance and Nominating Committee.

Mr. Kackley has served as a director of Orion since 2005. Mr. Kackley practiced as a public accountant for Arthur Andersen, LLP from 1963 to 1999. During this time, he was managing partner for the firm's northern Florida practice and its Midwest Region, including its Chicago office. In addition, in 1998 and 1999, he served as chief financial officer for Andersen Worldwide. Mr. Kackley serves as a director, a member of the executive committee and the audit committee chairman of Herman Miller, Inc., and as a director and member of the management resources and compensation committee and audit committee of

PepsiAmericas, Inc. He also served as a director and a member of the nominating and governance committee and the audit committee of Ryerson, Inc. prior to its sale.

(d) Not applicable.

(e) In connection with Mr. Kackley's employment as Orion's President and Chief Operating Officer, Orion and Mr. Kackley signed an offer letter (the "Offer Letter"), an Executive Employment and Severance Agreement (the "Employment Agreement") and a Stock Option Award Agreement (the "Stock Option Award Agreement"). Under the Offer Letter and the Employment Agreement, Orion will employ Mr. Kackley for an initial term through July 31, 2011, after which the Employment Agreement will renew for successive one-year terms only if the parties mutually agree. The Offer Letter and the Employment Agreement entitle Mr. Kackley to a base salary of \$300,000 for Orion's fiscal year 2010, and the Employment Agreement provides that his base salary may be increased thereafter from time to time by the Board. The Offer Letter and Employment Agreement also provide for a cash incentive award with a target payout equal to 75% of Mr. Kackley's base salary for Orion's fiscal year 2010. Corporate financial and individual goals and objectives for such target bonus have yet to be determined.

The Offer Letter and the Employment Agreement also specify Mr. Kackley's position with Orion, and the Employment Agreement provides that Mr. Kackley will devote his full business time and best efforts to the performance of his duties under the Employment Agreement, exclusive of his existing board of directors and similar positions and activities. The Offer Letter and the Employment Agreement provide (i) that Mr. Kackley will receive an automobile allowance and reimbursement for certain commuting costs and temporary housing expenses; (ii) that he will be entitled to participate in incentive plans and programs and other employee benefit plans that are generally provided to Orion's senior executives; and (iii) that he will receive a grant of an option to purchase 35,000 shares of Orion's common stock on August 3, 2009 (the "Grant Date") at an exercise price per share equal to the closing share price of Orion's common stock on the Grant Date. The terms of the option are set forth in the Stock Option Award Agreement, which provides that the option will vest and become exercisable upon any termination of Mr. Kackley's employment other than a termination for "Cause" (as defined in the Stock Option Award Agreement).

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Under the Employment Agreement, if Mr. Kackley's employment is terminated without "Cause" (as defined in the Employment Agreement) or for "Good Reason" (as defined in the Employment Agreement) prior to the end of the employment period, he will be entitled to (i) a lump sum severance benefit equal to the sum of his base salary plus the average of the prior three years' bonuses; (ii) a pro rata bonus for the year of the termination; and (iii) COBRA premiums at the active employee rate for the duration of the executive's COBRA continuation coverage period. The Employment Agreement also requires Mr. Kackley not to, during his employment and for two years following the termination of his employment, (x) disclose any of Orion's confidential information, (y) compete with Orion or (z) solicit the employees or other persons with business relationships with Orion.

The Employment Agreement provides that, upon a Change of Control (as defined in the Employment Agreement), Mr. Kackley's employment term would automatically be extended for two years. Following the Change of Control, Mr. Kackley would be guaranteed the same base salary and a bonus opportunity at least equal to 100% of the prior year's target award and with the same general probability of achieving performance goals as prior to the Change of Control. In addition, Mr. Kackley would be guaranteed participation in salaried and executive benefit plans that provide benefits, in the aggregate, at least as great as the benefits being provided prior to the Change of Control. The severance provisions would remain the same as in the pre-Change of Control context as described above, except that the severance amount would include two times the sum of his base salary plus the average of the prior three years' bonuses.

The Employment Agreement contains a "valley" excise tax provision under which all amounts payable to Mr. Kackley under the Employment Agreement and any other of Orion's agreements or plans that constitute change of control payments will be cut back to one dollar less than three times Mr. Kackley's "base amount," as defined by Internal Revenue Code ("Code") Section 280G, unless Mr. Kackley would retain a greater amount by receiving the full amount of the payment and personally paying the excise taxes. Under the Employment Agreement, Orion would not be obligated to gross up Mr. Kackley for any excise taxes imposed on excess parachute payments under Code Section 280G or 4999.

The foregoing descriptions of the Offer Letter, the Employment Agreement and the Stock Option Award Agreement are qualified in their entirety by reference to the full texts of the Offer Letter, the Employment Agreement and the Stock Option Award Agreement, copies of which are filed herewith as Exhibits 10.1, 10.2 and 10.3, respectively, and incorporated herein by reference. Orion's press release issued on July 22, 2009 announcing Mr. Kackley's appointment as President and Chief Operating Officer is filed herewith as Exhibit 99.1 and incorporated herein by reference.

(f) Not applicable.

Item 9.01. Financial Statements and Exhibits.

(a) Not applicable.

(b) Not applicable.

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(c) Not applicable.

(d) Exhibits. The following exhibits are being filed herewith:

(10.1) Offer Letter, dated as of July 22, 2009, between Orion and James R. Kackley.

(10.2) Executive Employment and Severance Agreement, dated as of July 22, 2009, between Orion and James R. Kackley.

(10.3) Stock Option Award Agreement, dated as of July 22, 2009, between Orion and James R. Kackley.

(99.1) Press release dated July 22, 2009.

**SIGNATURES**

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

**ORION ENERGY SYSTEMS, INC.**

Date: July 22, 2009

By: /s/ Neal R. Verfuert  
Neal R. Verfuert  
Chief Executive Officer

ORION ENERGY SYSTEMS, INC.

Exhibit Index to Current Report on Form 8-K

**Exhibit  
Number**

- (10.1) Offer Letter, dated as of July 22, 2009, between Orion and James R. Kackley.
- (10.2) Executive Employment and Severance Agreement, dated as of July 22, 2009, between Orion and James R. Kackley.
- (10.3) Stock Option Award Agreement, dated as of July 22, 2009, between Orion and James R. Kackley.
- (99.1) Press release dated July 22, 2009.

July 22, 2009

Mr. James Kackley

Dear Jim,

As a follow-up to our previous conversation, we are pleased to offer you a position in our organization. The general parameters of our offer are as follows:

Position:	President & COO
Direct Report:	Neal Verfuert
Base Salary:	\$300,000
Target Bonus:	75% of Base Salary for Fiscal 2010 (subject to the terms of the Orion Energy Systems, Inc. ("Orion") Executive Fiscal Year 2010 Annual Cash Incentive Program).
Automobile Allowance	\$1,000 per month, plus mileage reimbursement for business use (including mileage reimbursement for periodic commutes between Manitowoc and Mineral Point).
Housing Allowance	Reimbursement for actual out-of-pocket temporary living expenses in Manitowoc for the first year of employment, subject to review and reapproval by the Compensation Committee after one year.
Medical and Prescription Drugs:	Health coverage under a group plan, subject to deductible and co-payments. Eligibility begins first of the month following 60 days of employment.
Flexible Spending Account:	Pre-tax earnings may be set aside for qualified health care and dependent care expenses. Eligibility begins first of the month following 60 days of employment.
Vacation:	21 days per year. Eligibility begins first of the month following 60 days of employment.
Short and Long Term Disability Insurance:	Income protection for covered events, subject to group plan provisions. Eligibility begins first of the month following 60 days of employment.
Life Insurance:	Coverage under a group plan. Eligibility begins first of the month following 60 days of employment.
401(k):	Pre- and/or post-tax contributions, subject to Plan provisions. Company match up to \$150 annually. Eligibility begins on the first day of the calendar quarter following 90 days of employment.
Equity Incentive:	Subject to Orion's stock options policy, other provisions and conditions under Orion's 2004 Stock and Incentive Awards Plan and entry into the Stock Option Award Agreement attached hereto as Exhibit A, an option to purchase 35,000 shares of common stock, vesting upon termination of employment (other than termination for "Cause"). The grant date shall be effective on the first business day of the month following the start date of employment. The per share exercise price of the stock options shall be equal to the closing Nasdaq sale price of the common stock on such effective grant date. The options you have previously been awarded in connection with your service as a director of Orion will continue to vest as provided in the applicable option award agreement.

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Start Date:	July 22, 2009
Term:	Two Years, subject to mutual renewal.
Employment Agreement:	Terms of employment set forth in an employment agreement in the form attached hereto as Exhibit B.
Board Membership:	Membership on Orion's Board of Directors will continue, but you will resign from the Audit and Finance Committee and Nominating and the Corporate Governance Committee.

Please note that this offer letter is not intended to create, and shall not create, an employment contract between Orion and you. If you accept this offer letter, we intend to enter into the attached employment agreement that will govern the terms and conditions of your employment and the attached option award agreement that, along with Orion's 2004 Stock and Incentive Awards Plan, will govern the terms of your option award.

Please also note that by signing this letter, you represent and warrant that you are not bound or obligated in any way by any restrictive covenants (i.e., any agreement relating to noncompetition, confidentiality, or intellectual property) which arose from any prior employment or engagements and which would affect your position and the performance of your duties at Orion. If such restrictive covenants do apply to you or if you have any questions or doubts as to whether any such restrictive covenants would apply to you, please contact me immediately so that we may discuss further.

Jim, please acknowledge your understanding and acceptance of this offer letter by signing this letter, and return it along with two signed copies of the enclosed Employment Agreement. Should you have any questions, please feel free to give me a call.

Best regards,

/s/ Neal R. Verfuert

Neal R. Verfuert  
CEO

/s/ James R. Kackley

James R. Kackley

Name of Executive:	James R. Kackley
Position:	President and Chief Operating Officer
Fiscal Year 2010 Base Salary:	\$300,000
Effective Date:	July 22, 2009
Initial Term:	Effective Date through July 31, 2011
Renewal Periods are:	1 Year
Post-Change of Control Renewal Period is:	2 Years
Severance Multiplier is:	1x
Post-Change of Control Severance Multiplier is:	2x

## EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT

This Agreement (“Agreement”) is between the Executive named above (“Executive”), on the one hand, and Orion Energy Systems, Inc. (“Orion” and, together with its subsidiaries, the “Company”), on the other.

**WHEREAS**, the Executive is employed by Orion in a key employee capacity and the Executive’s services are valuable to the conduct of the business of the Company; and

**WHEREAS**, Orion and Executive desire to specify the terms and conditions on which Executive will commence employment with Orion as of the effective date set forth above (the “Effective Date”) and under which Executive will receive severance in the event that Executive separates from service with the Company.

**NOW, THEREFORE**, for good and valuable consideration, the parties agree as follows:

1. **Effective Date; Term.** This Agreement shall become effective on the Effective Date and continue until the end of the initial term set forth above. Thereafter, the Agreement shall only renew for successive renewal periods as set forth above if both parties mutually agree to renew the Agreement. Notwithstanding the foregoing, if a Change of Control occurs prior to the end of any term, the Agreement shall be automatically extended for the post- Change of Control renewal period set forth above beginning on the date of the Change of Control. Expiration of this Agreement will not affect the rights or obligations of the parties hereunder arising out of, or relating to, circumstances occurring prior to the expiration of this Agreement, which rights and obligations will survive the expiration of this Agreement.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them:

(a) **“Accrued Benefits”** shall mean the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive’s employment for reasonable and necessary expenses incurred by the Executive on behalf of the Company for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; and (iv) all other payments and benefits to which the Executive (or in the event of the Executive’s death, the Executive’s surviving spouse or other beneficiary), including those provided pursuant to Exhibit A, is entitled on the Termination Date under the terms of any benefit plan of the Company, excluding severance payments under any Company severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company’s prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii) and (iv), pursuant to the terms of the benefit plan or practice establishing such benefits.

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(b) **“Base Salary”** shall mean the Executive’s annual base salary with the Company as in effect from time to time.

(c) **“Board”** shall mean the board of directors of Orion or a committee of such Board authorized to act on its behalf in certain circumstances, including the Compensation Committee of the Board.

(d) **“Cause”** shall mean a good faith finding by the Board that Executive has (i) failed, neglected, or refused to perform the lawful employment duties related to his or her position or as from time to time assigned to him (other than due to Disability); (ii) committed any willful, intentional, or grossly negligent act having the effect of materially injuring the interest, business, or reputation of the Company; (iii) violated or failed to comply in any material respect with the Company’s published rules, regulations, or policies, as in effect or amended from time to time; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of this Agreement or any other applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company.

(e) **“Change of Control”** shall mean and be limited to any of the following:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company (“Excluded Persons”)) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the date on which the Company’s common stock was first sold to the public pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “IPO Date”), pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company’s then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals who, on the IPO Date, constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Act) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date, or whose appointment, election or nomination for election was previously so approved (collectively the "Continuing Directors"); *provided, however*, that individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds (2/3) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; *and, provided further*, that in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change of Control, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change of Control occurred; or

(iii) the consummation of a merger, consolidation or share exchange of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company), in each case, which requires approval of the shareholders of the Company, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or a sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), in each case, which requires approval of the shareholders of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least seventy-five percent (75%) of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

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Notwithstanding the foregoing, no "Change of Control" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

For purposes of this Section 2(e):

(i) the term "Person" shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert;

(ii) the terms "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations of the Act;

(iii) the term "Act" means the Securities Exchange Act of 1934, as amended; and

(iv) a Person shall be deemed to be the "Beneficial Owner" of any securities which:

a) such Person or any of such Person's Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase;

b) such Person or any of such Person's Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has "beneficial ownership" of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause b) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

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c) are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause b) above) or disposing of any voting securities of the Company.

(f) **“COBRA”** shall mean the provisions of Code Section 4980B.

(g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, as interpreted by rules and regulations issued pursuant thereto, all as amended and in effect from time to time. Any reference to a specific provision of the Code shall be deemed to include reference to any successor provision thereto.

(h) **“Competitive Business Activity”** shall mean the design and manufacture of lighting systems and controls for industrial, commercial and agricultural facilities.

(i) **“Disability”** shall mean, subject to applicable law, a total and permanent disability consisting of a mental or physical disability which precludes the disabled Executive from performing the material and substantial duties of his employment. Payment of benefits for total disability under a disability insurance policy shall be conclusive as to the existence of total disability, although such payments are not required in order to establish total disability for purposes of this Agreement. The Executive has a “total and permanent disability” if he is precluded by mental or physical disability for 180 days during any twelve (12) month period. For purposes of this Agreement, an Executive shall be deemed totally and permanently disabled at the end of such 180th day. In case of a disagreement as to whether an Executive is totally and permanently disabled and, at the request of any party, the matter shall be submitted to arbitration as provided for herein, and judgment upon the award may be entered in any court having jurisdiction thereof. Any costs of such proceedings (including the reasonable legal fees of the prevailing party) shall be borne by the non-prevailing party to such arbitration.

(j) **“General Release”** shall mean a release of all claims that Executive, and anyone who may succeed to any claims of Executive, has or may have against Orion, its board of directors, any of its subsidiaries or affiliates, or any of their employees, directors, officers, employees, agents, plan sponsors, administrators, successors (including the Successor), fiduciaries, or attorneys, including but not limited to claims arising out of Executive’s employment with, and termination of employment from, the Company, but excluding claims for (i) severance payments and benefits due pursuant to this Agreement and (ii) any salary, bonus, equity, accrued vacation, expense reimbursement and other ordinary payments or benefits earned or otherwise due with respect to the period prior to the date of any Separation from Service. The General Release shall be in a form that is reasonably acceptable to the Company or the Board.

(k) **“Good Reason”** shall mean the occurrence of any of the following without the consent of Executive: (i) a material diminution in the Executive’s Base Salary; (ii) a material diminution in the Executive’s authority, duties or responsibilities; (iii) a material diminution in the budget over which the Executive retains authority; (iv) a material change in the geographic location at which the Executive must perform services; or (v) a material breach by Orion of any provisions of this Agreement or any option agreement with the Company to which the Executive is a party.

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(l) **“Separation from Service”** shall mean Executive’s termination of employment from Orion and each entity that is required to be included in Orion’s controlled group of corporations within the meaning of Code Section 414(b), or that is under common control with Orion within the meaning of Code Section 414(c); *provided* that the phrase “at least 50 percent” shall be used in place of the phrase “at least 80 percent” each place it appears therein or in the regulations thereunder (collectively, “409A affiliates”). Notwithstanding the foregoing:

(i) If Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide leave of absence, Executive will not be deemed to have incurred a Separation from Service for the first six (6) months of the leave of absence, or if longer, for so long as Executive’s right to reemployment is provided either by statute or by contract.

(ii) Subject to paragraph (i), Executive shall incur a Separation from Service when the level of bona fide services provided by Executive to Orion and its 409A affiliates permanently decreases to a level of twenty percent (20%) or less of the level of services rendered by Executive, on average, during the immediately preceding 12 months of employment.

(iii) If, following Executive’s termination of employment, Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, Executive will not be deemed to have Separated from Service as long as Executive is providing bona fide services at a rate that is greater than twenty percent (20%) of the level of services rendered by Executive, on average, during the immediately preceding 12 months of service.

(m) **“Severance Payment”** shall mean the Executive’s Base Salary at the time of the Termination Date plus the average of the annual bonuses earned by the Executive with respect to each of the three completed fiscal years of the Company preceding the year in which the Termination Date occurs (or such lesser number of fiscal years for which the Executive was employed by the Company, with any partial year’s bonus being annualized with respect to such fiscal year) multiplied by the severance multiplier set forth above; *provided* that if Executive’s Termination Date occurs on or following a Change of Control, the multiplier described above shall be increased to the post-Change of Control severance multiplier set forth above and any reduction in Executive’s Base Salary since the date of the Change of Control shall be ignored.

(n) **“Successor”** shall mean the person to which this Agreement is assigned upon a Sale of Business within the meaning of Section 10.

(o) **“Termination Date”** shall mean the date of the Executive’s termination of employment from the Company, as further described in Section 4.

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### 3. Employment of Executive

(a) **Position.**

(i) Executive shall serve in the position set forth above in a full-time capacity. In such position, Executive shall have such duties and



authority as is customarily associated with such position and shall have such other titles and duties, consistent with Executive's position, as may be assigned from time to time by the Board.

(ii) Executive will devote Executive's full business time and best efforts to the performance of Executive's duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the rendition of such services either directly or indirectly, without the prior written consent of the Board; *provided* that nothing herein shall preclude Executive, subject to the prior approval of the Board, from accepting appointment to or continue to serve on any board of directors or trustees of any business organization or any charitable organization; *further provided* in each case, and in the aggregate, that such activities do not conflict or interfere with the performance of Executive's duties hereunder or conflict with Section 7. It is mutually agreed that the Executive's current board positions and other activities are hereby approved.

(b) **Base Salary.** Orion shall pay Executive a Base Salary at the annual rate set forth above for Fiscal Year 2010, payable in regular installments in accordance with the Company's usual payroll practices. Executive shall be entitled to such increases in Executive's base salary, if any, as may be determined from time to time by the Board.

(c) **Bonus Incentives.** Executive shall be entitled to participate in such annual and/or long-term cash and equity incentive plans and programs of Orion as are generally provided to the senior executives of Orion. On and after a Change of Control, to assure that Executive will have an opportunity to earn incentive compensation, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Company as the Company shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the post-Change of Control renewal period (as set forth above), with approximately the same degree of probability as the most attainable goals under the Company's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change of Control (whether one or more, the "Company Bonus Plan") and in view of the Company's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that Executive is eligible to earn under the Bonus Plan shall be no less than 100% of the Executive's target award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the post-Change of Control renewal period, including termination of Executive's employment.

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(d) **Employee Benefits.** Executive shall be entitled to participate in the Company's employee benefit plans (other than annual and/or long-term incentive programs, which are addressed in subsection (c)) as in effect from time to time on the same basis as those benefits are generally made available to other senior executives of Orion. On and after a Change of Control, Executive shall be included: (i) to the extent eligible thereunder (which eligibility shall not be conditioned on Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Company's salaried employees in general (including but not limited to group life insurance, hospitalization, medical, dental, and long-term disability plans) and (ii) in plans provided to executives of the Company of comparable status and position to Executive (including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus, cash bonus and similar or comparable plans); provided, that, in no event shall the aggregate level of benefits under the plans described in clause (i) and the plans described in clause (ii), respectively, in which Executive is included be less than the aggregate level of benefits under plans of the Company of the type referred to in such clause, respectively, in which Executive was participating immediately prior to the Change in Control.

(e) **Business Expenses.** The reasonable business expenses incurred by Executive in the performance of Executive's duties hereunder shall be reimbursed by the Company in accordance with Company policies.

(f) **Other Perquisites.** Executive shall be entitled to receive the other benefits and perquisites set forth in Exhibit A.

4. **Termination of Employment.** Executive's employment with the Company will terminate during the term of the Agreement, and this Agreement will terminate on the date of such termination, as follows:

(a) Executive's employment will terminate upon Executive's death.

(b) If Executive is Disabled, and if within thirty (30) days after Orion notifies the Executive in writing that it intends to terminate the Executive's employment, the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, Orion may terminate the Executive's employment, effective immediately following the end of such thirty-day period.

(c) Orion may terminate Executive's employment with or without Cause (other than as a result of Disability which is governed by subsection (b)) by providing written notice to Executive that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If the termination is without Cause, Executive's employment will terminate on the date specified in the written notice of termination. If the termination is for Cause, the Executive shall have thirty (30) days from the date the written notice is provided, or such longer period as Orion may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of Executive's employment for Cause. If the alleged conduct or act constituting Cause is not curable, Executive's employment will terminate on the date specified in the written notice of termination. If the alleged conduct or act constituting Cause is curable but Executive does not cure such conduct or act within the specified time period, Executive's employment will terminate on the date immediately following the end of the cure period. Notwithstanding the foregoing, a determination of Cause shall only be made in good faith by the Board, and after a Change of Control, by the Board of Directors of the Successor, which may terminate Executive for Cause only after providing Executive (i) written notice as set forth above, (ii) the opportunity to appear before such board and provide rebuttal to such proposed termination, and (iii) written notice following such appearance confirming such termination and certifying that the decision to terminate Executive for Cause was approved in good faith by at least sixty-six percent (66%) of the members of such board, excluding Executive. Unless otherwise directed by Orion, from and after the date of the written notice of proposed termination, Executive shall be relieved of his or her duties and responsibilities and shall be considered to be on a paid leave of absence pending any final action by the Board or the Board of Directors of the Successor confirming such proposed termination.

(d) Executive may terminate his or her employment for or without Good Reason by providing written notice of termination to Orion that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If Executive is alleging a termination for Good Reason, Executive must provide written notice to Orion of the existence of the condition constituting Good Reason within ninety (90) days of the initial existence of such condition, and Orion must have a period of at least thirty (30) days following receipt of such notice to cure such condition. If such condition is not cured by Orion within such thirty-day period, Executive's termination of employment from the Company shall be effective on the date immediately following the end of such cure period.

## 5. Payments upon Termination.

(a) **Entitlement to Severance.** Subject to the other terms and conditions of this Agreement, Executive shall be entitled to the Accrued Benefits, and to the severance benefits described in subsection (c), in either of the following circumstances while this Agreement is in effect:

- (i) Executive's employment is terminated by Orion without Cause, except in the case of death or Disability; or
- (ii) Executive terminates his or her employment with the Company for Good Reason.

If Executive dies after receiving a notice by Orion that Executive is being terminated without Cause, or after providing notice of termination for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the Accrued Benefits and the severance benefits described in subsection (c) at the same time such amounts would have been paid or benefits provided to Executive had he or she lived.

(b) **General Release Requirement.** As an additional prerequisite for receipt of the severance benefits described in subsection (c), Executive must execute, deliver to Orion, and not revoke (to the extent Executive is allowed to do so) a General Release.

(c) **Severance Benefits; Timing and Form of Payment.** Subject to the limitations imposed by Section 6, if Executive is entitled to severance benefits, then:

- (i) Company shall pay Executive the Severance Payment in a lump sum within ten (10) days following the Executive's Separation from Service, or if later, the date on which the General Release is no longer revocable, or if later, the date on which the amount payable under Section 6 is determined, but in no event may be payment be made more than 2½ months after the year in which Executive's Separation from Service occurs;
- (ii) At the same time that the Severance Payment is made, Company shall pay Executive a lump sum amount equal to the Executive's annual target cash bonus opportunity (if any) as established by the Board or the Compensation Committee of the Board for the fiscal year in which the Separation from Service occurs, multiplied by a fraction, the numerator of which is the number of days that have elapsed during the annual performance period to the date of the Executive's Separation from Service and the denominator of which is 365; and
- (iii) Executive shall be entitled to pay premiums for COBRA continuation coverage for the length of such coverage at the same rate as is being charged to active employees for similar coverage.

All payments shall be subject to payroll taxes and other withholdings in accordance with the Company's (or the applicable employer of record's) standard payroll practices and applicable law.

(d) **Other Termination of Employment.** If Executive's employment terminates for any reason other than those described in subsection (a), the Executive (or the Executive's estate in the event of his or her death), shall be entitled to receive only the Accrued Benefits. Executive must be terminated for Cause pursuant to and in accordance with Section 4(c) of this Agreement in order for the consequences of such a Cause termination to apply to Executive under any stock option or similar equity award agreement with the Company to which Executive is then a party. The Company's obligations under this Section 5 shall survive the termination of this Agreement.

6. **Limitations on Severance Payments and Benefits.** Notwithstanding any other provision of this Agreement, if any portion of the Severance Payment or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "Total Payments"), would constitute an "excess parachute payment," then the Total Payments to be made to Executive shall be reduced such that the value of the aggregate Total Payments that Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which Executive may receive without becoming subject to the tax imposed by Code Section 4999 or which the Company may pay without loss of deduction under Code Section 280G(a); *provided* that the foregoing reduction in the amount of Total Payments shall not apply if the After-Tax Value to Executive of the Total Payments prior to reduction in accordance herewith is greater than the After-Tax Value to Executive if Total Payments are reduced in accordance herewith. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Code Section 280G, and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Code Section 1274(b)(2). Within twenty (20) business days following delivery of the notice of termination or notice by Orion to Executive of its belief that there is a payment or benefit due Executive that will result in an excess parachute payment as defined in Code Section 280G, Executive and Orion, at Orion's expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel selected by Orion's independent auditors and acceptable to Executive in Executive's sole discretion, which opinion sets forth: (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments without regard to the

limitations of this Section 6, (D) the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section 6 did not apply, and (E) the After-Tax Value of the Total Payments taking into account the reduction in Total Payments contemplated under this Section 6. As used in this Section 6, the term "Base Period Income" means an amount equal to Executive's "annualized includible compensation for the base period" as defined in Code Section 280G(d)(1). For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by Orion's independent auditors in accordance with the principles of Code Sections 280G(d)(3) and (4), which determination shall be evidenced in a certificate of such auditors addressed to Orion and Executive. For purposes of determining the After-Tax Value of Total Payments, Executive shall be deemed to pay federal income taxes and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Termination Payment is to be made and state and local income taxes at the highest marginal rates of taxation in the state and locality of Executive's domicile for income tax purposes on the date the Termination Payment is to be made, net of the maximum reduction in federal income taxes that may be obtained from deduction of such state and local taxes. Such opinion shall be dated as of the Termination Date and addressed to Orion and Executive and shall be binding upon the Company and Executive. If such opinion determines that there would be an excess parachute payment and that the After-Tax Value of the Total Payments taking into account the reduction contemplated under this Section is greater than the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section did not apply, then the Termination Payment hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated as specified by Executive in writing delivered to Orion within five business days of Executive's receipt of such opinion or, if Executive fails to so notify Orion, then as Orion shall reasonably determine, so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such legal counsel so requests in connection with the opinion required by this Section, Executive and Orion shall obtain, at Orion's expense, and the legal counsel may rely on in providing the opinion, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by Executive. Notwithstanding the foregoing, the provisions of this Section 6, including the calculations, notices and opinions provided for herein, shall be based upon the conclusive presumption that the following are reasonable: (1) the compensation and benefits provided for in Section 3 and (2) any other compensation, including but not limited to the Accrued Benefits, earned prior to the date of Executive's Separation from Service by the Executive pursuant to the Company's compensation programs if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change in Control or the Executive's Separation from Service. If the provisions of Code Sections 280G and 4999 are repealed without succession, then this Section 6 shall be of no further force or effect.

## 7. Covenants by Executive.

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(a) **Confidentiality and Non-Disclosure.** During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, he or she agrees that he or she will not, except in furtherance of the business of the Company, disclose, furnish, or make available to any person or use for the benefit of himself or herself or any other person any confidential or proprietary information or data of the Company including, but not limited to, trade secrets, customer and supplier lists, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition or disposition plans, new personnel employment plans, methods of manufacture, technical process, and formulae, designs and design projects, inventions and research projects and financial budgets and forecasts except (i) information which at the time is available to others in the business or generally known to the public other than as a result of disclosure by Executive not permitted hereunder, and (ii) when required to do so by a court of competent jurisdiction, by any governmental agency or by any administrative, legislative or regulatory body; *provided* that in this instance Executive shall make reasonable efforts to inform the Company of any such request prior to any disclosure so as to permit the Company a meaningful opportunity to seek a protective order or similar adjudication. Upon termination of his or her employment with the Company, Executive will immediately return to the Company all written or electronically stored confidential or proprietary information in whatever format it is contained.

(b) **Non-Competition/Non-Solicitation.**

(i) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to directly or indirectly engage, or assist any business or entity, in Competitive Business Activity in any capacity, including without limitation as an employee, officer, or director of, or consultant or advisor to, any person or entity engaged directly or indirectly in a business which engages in Competitive Business Activity, in North America or anywhere that Orion or its Successor does business at the time of Executive's termination of employment, without the written consent of the Board.

(ii) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to, in any form or manner, directly or indirectly, on his or her own behalf or in combination with others (1) solicit, induce or influence any customer, supplier, lender, lessor or any other person with a business relationship with the Company to discontinue or reduce the extent of such business relationship, or (2) recruit, solicit or otherwise induce or influence any employee of the Company to discontinue their employment with the Company.

(c) **Disclosure and Assignment to the Company of Inventions and Innovations.**

(i) Executive agrees to disclose and assign to the Company as the Company's exclusive property, all inventions and technical or business innovations, including but not limited to all patentable and copyrightable subject matter (collectively, the "Innovations") developed, authored or conceived by Executive solely or jointly with others during the period of Executive's employment, including during Executive's employment prior to the date of this Agreement, (1) that are along the lines of the business, work or investigations of the Company to which Executive's employment relates or as to which Executive may receive information due to Executive's employment with the Company, or (2) that result from or are suggested by any work which Executive may do for the Company or (3) that are otherwise made through the use of Company time, facilities or materials. To the extent any of the Innovations is copyrightable, each such Innovation shall be considered a "work for hire."

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(ii) Executive agrees to execute all necessary papers and otherwise provide proper assistance (at the Company's expense), during and subsequent to Executive's employment, to enable the Company to obtain for itself or its nominees, all right, title, and interest in and to patents, copyrights, trademarks or other legal protection for such Innovations in any and all countries.

(iii) Executive agrees to make and maintain for the Company adequate and current written records of all such Innovations;

(iv) Upon any termination of Executive's employment, employee agrees to deliver to the Company promptly all items which belong to the Company or which by their nature are for the use of Company employees only, including, without limitation, all written and other materials which are of a secret or confidential nature relating to the business of the Company.

(v) In the event Company is unable for any reason whatsoever to secure Executive's signature to any lawful and necessary documents required, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for letters patent or copyright for any Innovation, Executive hereby irrevocably designates and appoints Company and its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in Executive's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of letters patent or registration of copyright thereon with the same legal force and effect as if executed by Executive. Executive hereby waives and quitclaims to Company any and all claims, of any nature whatsoever, which Executive may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

(d) **Remedies Not Exclusive.** In the event that Executive breaches any terms of this Section 7, Executive acknowledges and agrees that said breach may result in the immediate and irreparable harm to the business and goodwill of the Company and that damages, if any, and remedies of law for such breach may be inadequate and indeterminable. The Company, upon Executive's breach of this Section 7, shall therefore be entitled (in addition to and without limiting any other remedies that the Company may seek under this Agreement or otherwise at law or in equity) to (1) seek from any court of competent jurisdiction equitable relief by way of temporary or permanent injunction and without being required to post a bond, to restrain any violation of this Section 7, and for such further relief as the court may deem just or proper in law or equity, and (2) in the event that the Company shall prevail, its reasonable attorneys fees and costs and other expenses in enforcing its rights under this Section 7.

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(e) **Severability of Provisions.** If any restriction, limitation, or provision of this Section 7 is deemed to be unreasonable, onerous, or unduly restrictive by a court of competent jurisdiction, it shall not be stricken in its entirety and held totally void and unenforceable, but shall remain effective to the maximum extent possible within the bounds of the law. If any phrase, clause or provision of this Section 7 is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause, or provision shall be deemed severed from this Section 7, but will not affect any other provision of this Section 7, which shall otherwise remain in full force and effect. The provisions of this Section 7 are each declared to be separate and distinct covenants by Executive.

8. **Notice.** Any notice, request, demand or other communication required or permitted herein will be deemed to be properly given when personally served in writing or when deposited in the United States mail, postage prepaid, addressed to Executive at the address appearing at the end of this Agreement and to the Company with attention to the Chief Executive Officer of Orion and the General Counsel of Orion. Either party may change its address by written notice in accordance with this paragraph.

9. **Set Off; Mitigation.** The Company's obligation to pay Executive the amounts and to provide the benefits hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Executive to the Company. However, Executive shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise.

10. **Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns. If Orion experiences a Change of Control, or otherwise sells, assigns or transfers all or substantially all of its business and assets to any person or if Orion merges into or consolidates or otherwise combines (where Orion does not survive such combination) with any person (any such event, a "Sale of Business"), then Orion shall assign all of its right, title and interest in this Agreement as of the date of such event to such person, and Orion shall cause such person, by written agreement in form and substance reasonably satisfactory to Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of Orion to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be the Termination Date. In case of such assignment by Orion and of assumption and agreement by such person, as used in this Agreement, "Orion" shall thereafter mean the person which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such person. Executive shall, in his or her discretion, be entitled to proceed against any or all of such persons, any person which theretofore was such a successor to Orion, and Orion (as so defined) in any action to enforce any rights of Executive hereunder. Except as provided in this Section 10, this Agreement shall not be assignable by Orion. This Agreement shall not be terminated by the voluntary or involuntary dissolution of Orion.

11. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement that cannot be mutually resolved by the Executive and the Company, including any dispute as to the calculation of the Executive's Benefits, Base Salary, Bonus Amount or any Severance Payment hereunder, shall be submitted to arbitration in Milwaukee, Wisconsin, in accordance with the procedures of the American Arbitration Association. The determination of the arbitrator shall be conclusive and binding on the Company and the Executive, and judgment may be entered on the arbitrator's award in any court having jurisdiction.

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12. **Applicable Law and Jurisdiction.** This Agreement is to be governed by and construed under the laws of the United States and of the State of Wisconsin without resort to Wisconsin's choice of law rules. Each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement will lie in the appropriate federal or state courts in the State of Wisconsin and specifically waives any and all objections to such jurisdiction and venue.

13. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and will not be used in construing it.

14. **Invalid Provisions.** Subject to Section 7(e), should any provision of this Agreement for any reason be declared invalid, void, or unenforceable by a court of competent jurisdiction, the validity and binding effect of any remaining portion will not be affected, and the remaining portions of this Agreement will

remain in full force and effect as if this Agreement had been executed with said provision eliminated.

15. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. **Entire Agreement.** This Agreement, together with the employment offer letter dated as of the Effective Date and incorporated herein, contains the entire agreement of the parties with respect to the subject matter of this Agreement except where other agreements are specifically noted, adopted, or incorporated by reference. This Agreement otherwise supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Executive by Company, and all such agreements shall be void and of no effect. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding.

17. **Modification.** This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by Orion and Executive.

18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**WHEREAS**, this Agreement is effective as of the Effective Date set forth above.

EXECUTIVE

/s/ James R. Kackley  
James R. Kackley

ORION ENERGY SYSTEMS, INC.

By: /s/ Neal R. Verfuert  
Neal R. Verfuert  
Chief Executive Officer

**ORION ENERGY SYSTEMS, INC.  
2004 STOCK AND INCENTIVE AWARDS PLAN  
STOCK OPTION AWARD**

James R. Kackley

You have been granted an option (your "Option") to purchase shares of common stock ("Shares") of Orion Energy Systems, Inc. (the "Company") under the Orion Energy Systems, Inc. 2004 Stock and Incentive Awards Plan (the "Plan") with the following terms and conditions:

Grant Date: August 3, 2009

Type of Option: Nonqualified Stock Option

Number of Option Shares: Thirty-Five Thousand (35,000)

Exercise Price per Share: U.S. \$[\_.\_\_] [Closing share price on August 3, 2009]

Vesting: Your Option will vest and become exercisable upon any termination of your employment other than a termination for Cause (as defined below).

Termination Date: Your Option expires at, and cannot be exercised after, the close of business at the Company's headquarters on the earliest to occur of:

- The tenth (10th) anniversary of the Grant Date;
- One year after your termination of employment or service as a result of death or disability (within the meaning of Code Section 22(e)(3)); or
- One year after your termination of employment or service for any other reason, provided that if you die during this one year period, the exercise period will be extended until one year after the date of your death.

If the date this Option terminates as specified above falls on a day on which the stock market is not open for trading or on a date that you are prohibited by Company policy (such as an insider trading policy) from exercising the Option, the termination date shall be automatically extended to the first available trading day following the original termination date, but not beyond the tenth (10<sup>th</sup>) anniversary of the Grant Date.

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Notwithstanding the above, your entire Option is terminated immediately if the Company or an Affiliate terminates you for Cause, or if your employment or service is otherwise terminated at a time when you could be terminated for Cause.

For purposes of this Agreement, "Cause" means any of the following: (i) failure to perform or observe any of the terms or provisions of any written employment agreement with the Company or an Affiliate, or if no written employment agreement exists, the gross dereliction of your employment duties; (ii) failure to comply fully with the lawful directives of the Board of Directors of the Company; (iii) dishonesty; (iv) misconduct; (v) conviction of a crime involving moral turpitude; (vi) substance abuse; (vii) misappropriation of funds; (viii) disloyalty or disparagement of the Company, and of its Affiliates, or any of their management or employees; or (ix) other proper cause determined in good faith by the Committee.

Manner of Exercise: You may exercise your Option only to the extent vested and only if it has not terminated. To exercise your Option, you must complete the "Notice of Stock Option Exercise" form provided by the Company and return it to the address indicated on the form. The form will be effective when it is received by the Company, but exercise will not be completed until you pay the total exercise price and all applicable withholding taxes due as a result of the exercise to the Company.

If someone else wants to exercise your Option after your death, that person must contact the Company and prove to the Company's satisfaction that he or she is entitled to do so.

Your ability to exercise your Option may be restricted by the Company if required by applicable law.

Restrictions on Resale: By accepting your Option, you agree not to sell any Shares acquired under your Option at a time when applicable laws, Company policies or an agreement between the Company and its underwriters prohibit a sale.

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Restrictions on Transfer: During your lifetime, this Option is only exercisable by you. You may not transfer, pledge or assign this Option, by operation of law or otherwise, except pursuant to your will or the laws of descent and distribution. If you attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Option, except as provided above, or in the event this Option is subject to levy or attachment, execution or similar process, the Company may terminate this Option by providing written notice to you.

Rescission of Exercise; Disgorgement of Option Gains: If you are terminated for Cause, or if you are not terminated for Cause but the Committee later determines that you could have been terminated for Cause if all facts had been known at that time, or if the Committee determines that, after your

termination of employment, you have violated the provisions of any non-competition, non-solicitation, confidentiality or assignment of inventions agreement then in effect, then your Option will terminate immediately on the date of such termination or determination, as applicable, and the Committee may, in its sole and absolute discretion, (i) rescind any notice of exercise submitted by you for which payment or the issuance of Shares has not been completed, in which event any exercise price you have tendered will be promptly returned to you or retained by the Company as an offset as provided below, and/or (ii) notify you in writing within two (2) years after exercise of all or any portion of the Option that any exercise made within the one (1) year period prior to your termination or prior to your breach of any non-competition, non-solicitation, confidentiality or assignment of inventions agreement, is rescinded. Within ten (10) days after receiving such notice from the Company, you shall pay to the Company the amount of any cash payment received, or the value of any other gain realized, as a result of the rescinded exercise. Notwithstanding the foregoing, the Company shall have the right to retain (as an offset against any amounts due hereunder), the exercise price and withholding amount tendered by you with respect to any rescinded exercise, and the Company shall have the right to offset against any other amounts due from the Company to you the amount owed by you hereunder.

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Notice of Sale:

If your Option is designated as an incentive stock option, you must promptly report to the Secretary of the Company any disposition of the Shares acquired under your Option that is made within two (2) years from the Grant Date or within twelve (12) months from the date you acquired the Shares (the "Notice Period"). In addition, the Company may, at any time during the Notice Period, place a legend or legends on any certificate(s) for the Shares issued under your Option requesting the Company's transfer agent to notify the Company of any transfer of the Shares.

Miscellaneous:

- As a condition of the granting of your Option, you agree, for yourself and your legal representatives or guardians, that this Stock Option Award shall be interpreted by the Committee and that any interpretation by the Committee of the terms of this Stock Option Award or the Plan and any determination made by the Committee pursuant to this Stock Option Award or the Plan shall be final, binding and conclusive. Notwithstanding the foregoing, this Stock Option Award may not be amended, and the Company may not take any other action the effect of which is, to reduce the Exercise Price per Share other than (i) pursuant to Section 6.4 of the Plan, and in accordance with Section 1.409A-1(b)(5)(v)(B) of the Treasury Regulations, or (ii) in connection with a transaction which is considered the grant of a new option for purposes of Section 409A of the Code, provided that the new Exercise Price per Share is not less than Fair Market Value of a Share on the new grant date.
- As a condition of the granting of your Option, except as required by law, you agree not to disclose information regarding the existence, terms, or conditions of this Option to any person or entity whatsoever, including without limitation any members of the media (including, but not limited to, print journalists, newspapers, radio, television, cable, satellite programs, or Internet media) or any Internet web page or "chat room," or any other entity or person, with the exception of your spouse, accountant, tax advisor, and/or attorneys. Any violation of this provision may result in immediate and complete forfeiture of all rights granted under this Option if so determined by the Committee.
- As a condition of the granting of your Option, you acknowledge and agree that this Stock Option Award and the Plan constitute the entire agreement of the parties with respect to the subject matter of this Stock Option Award and the Plan. This Stock Option Award and the Plan supersede any and all other agreements or representations, both verbal and written, between the parties to this Stock Option Award with respect to your Option. You represent and warrant that you have no other outstanding options to purchase Common Stock or any other security of the Company other than your Option or any options previously granted and described in any agreement similar to this Stock Option Award, and you hereby release the Company from any claims and liabilities relating thereto.

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- This Stock Option Award may be executed in counterparts.

Your Option is granted under and governed by the terms and conditions of the Plan. Additional provisions regarding your Option and definitions of capitalized terms used and not defined in your Option can be found in the Plan.

BY SIGNING BELOW AND ACCEPTING THIS STOCK OPTION AWARD, YOU AGREE  
TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN.  
YOU ALSO ACKNOWLEDGE RECEIPT OF THE PLAN.

/s/ Neal R. Verfuert  
Neal R. Verfuert, CEO

/s/ James R. Kackley  
James R. Kackley, Optionee

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## Orion Announces Key Management Addition with Appointment of President and Chief Operating Officer

*James R. Kackley to assume full-time responsibilities for Orion's day-to-day operations*

**MANITOWOC, Wis. — July 22, 2009** — Orion Energy Systems, Inc. (Nasdaq: OESX), a leading provider of energy management systems to the commercial and industrial sectors, today announced the appointment of James R. Kackley, a member of Orion's Board of Directors, as President and Chief Operating Officer. Mr. Kackley will oversee Orion's day-to-day operations and will report to Neal R. Verfueth, Orion's founder, Chief Executive Officer and current President. Mr. Verfueth will continue as Orion's Chief Executive Officer, responsible for the overall strategic vision and leadership direction for the company.

Mr. Kackley has served as a director of Orion since 2005. He will continue to serve as a director of Orion, but will step aside as a member and chair of all Board Committees. Russell Flaum, an outside director, will assume the responsibilities of chairman of Orion's Audit and Finance Committee and Mark Williamson, also an outside director, will serve on Orion's Compensation Committee and its Governance and Nominating Committee.

"Jim's addition to the executive management team is a terrific development at Orion. His tenure at the Company and deep knowledge of the business, coupled with his strong operational and financial background, will help the company achieve its growth and profitability goals" said Neal Verfueth. "We are confident that he will draw upon his wealth of experience to make immediate contributions to the company."

"The opportunity that lies before Orion is tremendous," commented Jim Kackley. "I am very excited to join the team in a new capacity and look forward to helping drive execution in pursuit of this opportunity. By ceding many of the day-to-day operational responsibilities to myself and the rest of the management team, this role shift will allow Neal to focus on sales management, working with large customers and partners, developing new products and pursuing strategic growth initiatives."

Mr. Kackley spent over 35 years at Arthur Andersen and Andersen Worldwide. During this time, he was managing partner for the firm's northern Florida practice and its Midwest region, including its Chicago office. In addition, in 1998 and 1999, he served as chief financial officer for Andersen Worldwide.

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Currently, Mr. Kackley serves as a director, a member of the executive committee and the audit committee chairman of Herman Miller, Inc., and as a director and member of the management resources and compensation committee and audit committee of PepsiAmericas, Inc. Mr. Kackley also served as a director and a member of Board committees of Ryerson, Inc. prior to its sale.

Also announced today, Erik G. Birkerts, Orion's current Chief Operating Officer, will become an Executive Vice President of the company, shifting his responsibilities slightly to focus on Orion's product financing initiatives, while maintaining his role in the company's business and corporate development, strategic planning and investor relations initiatives.

### Release of First Quarter Financial Results

Orion will provide complete financial results and additional commentary pertaining to Fiscal 2010 first quarter when it reports its first quarter financial results on Tuesday, August 4, 2009. The details of Orion's quarterly earnings webcast and conference call are as follows:

*Date:* *Tuesday, August 4, 2009*

*Time:* *5:30 p.m. Eastern*

#### *Access by conference call:*

Domestic callers: Dial 888-455-2265

International callers: Dial 719-457-2626

#### *Access by webcast:*

Go to the Investor Relations section of Orion Energy Systems' Web site at <http://investor.oriones.com/events.cfm> for a live webcast link. To ensure a timely connection, it is recommended that users register at least 15 minutes prior to the scheduled webcast.

An audio replay of the earnings conference call will be available shortly after the call and will remain available through August 11, 2009. The replay can be accessed by dialing 888-203-1112. International callers should dial 719-457-0820. The replay pass code for all callers is 2948259.

**Orion Energy Systems Inc. (Nasdaq: OESX)** is a leading power technology enterprise that designs, manufactures and implements energy management systems, consisting primarily of high-performance, energy-efficient lighting systems, controls and related services for commercial and industrial customers without compromising their quantity or quality of light. Orion has deployed its energy management systems in 4,581 facilities across North America. Since 2001, Orion technology has displaced more than 435 megawatts, saving customers more than \$577 million and reducing indirect carbon dioxide emissions by 4.9 million tons. Orion's technology was recently internationally recognized with a Platts Global Energy Award for the single most innovative and sustainable green technology of 2008. For more information, visit [www.oesx.com](http://www.oesx.com).



## **Safe Harbor Statement**

Certain matters discussed in this press release are “forward-looking statements” intended to qualify for the safe harbors from liability established by the Private Securities Litigation Reform Act of 1995. These forward-looking statements may generally be identified as such because the context of such statements will include words such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “will,” “would” or words of similar import. Similarly, statements that describe future plans, objectives or goals are also forward-looking statements. Such forward-looking statements are subject to certain risks and uncertainties that could cause results to differ materially from those expected, including, but not limited to, the following: (i) further deterioration of market conditions; (ii) Orion’s ability to compete in a highly competitive market and its ability to respond successfully to market competition; (iii) increasing duration of customer sales cycles; (iv) the market acceptance of Orion’s products and services, including the Orion Virtual Power Plant; (v) price fluctuations, shortages or interruptions of component supplies and raw materials used to manufacture Orion’s products; (vi) loss of one or more key customers or suppliers, including key contacts at such customers; (vii) a reduction in the price of electricity; (viii) the cost to comply with, and the effects of, any current and future government regulations, laws and policies; (ix) increased competition from government subsidiaries and utility incentive programs; (x) dependence on customers’ capital budgets for sales of products and services; (xi) Orion’s ability to effectively manage its anticipated growth; and (xii) potential warranty claims. Shareholders, potential investors and other readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements made herein are made only as of the date of this press release and Orion undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise. More detailed information about factors that may affect our performance may be found in Orion’s filings with the Securities and Exchange Commission, which are available at <http://www.sec.gov> or at <http://www.oriones.com> in the Investor Relations section of Orion’s website.

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