

PEROT SYSTEMS CORP
Form SC 14D9
October 02, 2009

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

**SCHEDULE 14D-9
(Rule 14d-101)**

**SOLICITATION/RECOMMENDATION STATEMENT
UNDER SECTION 14(d)(4)
OF THE SECURITIES EXCHANGE ACT OF 1934**

PEROT SYSTEMS CORPORATION
(Name of Subject Company)

PEROT SYSTEMS CORPORATION
(Name of Person Filing Statement)

CLASS A COMMON STOCK, PAR VALUE \$0.01 PER SHARE
(Title of Class of Securities)

714265105
(CUSIP Number of Class of Securities)

**THOMAS D. WILLIAMS
VICE PRESIDENT, SECRETARY AND GENERAL COUNSEL
PEROT SYSTEMS CORPORATION
2300 West Plano Parkway
Plano, Texas 75075
(972) 577-0000**

*(Name, Address and Telephone Number of Person Authorized to
Receive Notice and Communications on Behalf of the Person(s) Filing Statement)*

With copies to:

**JOHN W. MARTIN
SOREN LINDSTROM
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201
(214) 953-6500**

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BAKER BOTTS L.L.P.
910 Louisiana Street, Suite 3200
Houston, Texas 77002
(713) 229-1234**

o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Item 1. Subject Company Information.

(a) Name and Address

The name of the subject company is Perot Systems Corporation, a Delaware corporation (Perot Systems). The address of the principal executive offices of Perot Systems is 2300 West Plano Parkway Plano, Texas 75075. The telephone number of Perot Systems at its principal executive offices is (972) 577-0000.

(b) Securities

The title of the class of equity securities to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with the Exhibits and Annexes hereto, this Statement) relates is the Class A Common Stock, par value \$0.01 per share, of Perot Systems (Common Stock). As of the close of business on September 17, 2009, 121,322,396 shares of Common Stock were issued and outstanding.

Item 2. Identity and Background of Filing Person.

(a) Name and Address

The filing person is Perot Systems. Perot Systems name, business address and business telephone number are set forth in Item 1(a) above.

(b) Tender Offer

This Statement relates to the offer by DII-Holdings Inc. (Purchaser), a Delaware corporation and an indirect, wholly-owned subsidiary of Dell Inc., a Delaware corporation (Dell), to purchase all of the issued and outstanding shares of Common Stock (each, a Share), for \$30.00 per Share, in cash to the seller (such price, or any higher per share price paid in the offer, the Offer Price) without interest and less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 2, 2009 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal which, together with the Offer to Purchase, each as may be amended or supplemented from time to time, collectively constitute the Offer). The Offer is further described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time, the Schedule TO) filed by Dell and Purchaser with the Securities and Exchange Commission (the SEC) on October 2, 2009. A copy of each of the Offer to Purchase and the Letter of Transmittal are attached as Exhibit (a)(1)(A) and Exhibit (a)(1)(B), respectively, to the Schedule TO, and each is incorporated herein by reference.

The Offer is being made pursuant to the Agreement and Plan of Merger, dated as of September 20, 2009 (as it may be amended, supplemented or otherwise modified from time to time, the Merger Agreement), by and among Perot Systems, Dell and Purchaser. The Merger Agreement provides that, among other things, the Offer is subject to the satisfaction or waiver of a number of customary closing conditions set forth in the Merger Agreement, including, among others, that (i) there is validly tendered (and not properly withdrawn prior to the expiration of the Offer), a number of Shares which, when taken together with the Shares, if any, beneficially owned by Dell, the Purchaser or any of their affiliates, represents at least 662/3% of the total outstanding Shares ((a) assuming the issuance of all Shares (other than the Top-Up Option Shares (as defined below)) upon the exercise, conversion or exchange of all outstanding options, warrants, convertible or exchangeable securities and similar rights; provided, that only such outstanding options that vest on or before December 31, 2010 shall be included for this calculation but regardless of the conversion or exercise price or other terms and conditions thereof, and (b) excluding Shares tendered in the Offer

pursuant to the guaranteed delivery procedures described herein as to which delivery has not been completed) (the Minimum Condition), (ii) certain regulatory clearances have been obtained by the parties, including the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and clearances under antitrust laws of other countries, (iii) a material adverse effect to Perot Systems shall not have occurred, and (iv) the other conditions set forth in the Merger Agreement have been satisfied or waived.

Pursuant to the terms of the Merger Agreement, Perot Systems granted Dell and Purchaser, subject to certain conditions and limitations, an irrevocable option to purchase, following completion of the Offer and at the Offer Price, a number of Shares that, when added to the number of Shares owned by Dell or Purchaser at the time of

exercise of the option, constitutes one share more than 90% of the fully-diluted Shares (the *Top-Up Option*). The Top-Up Option is intended to expedite the timing of the completion of the Merger by effecting the Merger pursuant to Delaware's short form merger statute. Following the consummation of the Offer and, if necessary, the exercise of the Top-Up Option, if Purchaser does not own at least 90% of the outstanding Shares, a Perot Systems stockholder vote will be required to consummate the Merger. In such case, the approval of the Merger at a meeting of Perot Systems stockholders would be assured because of Purchaser's ownership of at least 66²/₃% of the Shares following completion of the Offer.

At the effective time of the Merger (the *Effective Time*), Purchaser will be merged with and into Perot Systems, with Perot Systems continuing as the surviving corporation (the *Surviving Corporation*) and an indirect, wholly-owned subsidiary of Dell. Each outstanding Share, other than Shares held in the treasury of or reserved for issuance by Perot Systems and Shares owned by Dell or its subsidiaries immediately prior to the Effective Time, or which have been cashed out or settled pursuant to Perot Systems' equity based compensation plans (*Stock Plans*) as described in the following sentence, will automatically be converted into the right to receive the Offer Price without interest thereon and less any applicable withholding or stock transfer taxes on the terms and subject to the conditions set forth in the Merger Agreement. The Merger Agreement provides that options to purchase Shares and stock appreciation rights settleable in Shares (collectively, *Company Stock Option Awards*) granted under any of Perot Systems' Stock Plans immediately prior to the time that Dell owns at least 80% of the outstanding Shares for purposes of section 1504 of the Internal Revenue Code of 1986, as amended (the *Threshold Time*), will vest and be cancelled subject to and immediately following the Threshold Time, and the holder of such Company Stock Option Award will receive from Dell or Purchaser, as soon as administratively practicable following the Threshold Time, an amount (subject to any applicable withholding tax) in cash equal to the product of (x) the excess, if any, of the Offer Price, without interest thereon and less any applicable withholding taxes, over the exercise or base price, as applicable, per share of each such Company Stock Option Award, multiplied by (y) the total number of Shares subject to such Company Stock Option Award. The Merger Agreement further provides that each restricted stock unit (including any restricted stock award, phantom restricted stock award, deferred stock unit, whether performance-based, time-based or otherwise) (a *Restricted Stock Award*) that is outstanding under any Stock Plan immediately before the Threshold Time, will vest and be cancelled immediately following the Threshold Time and converted into the right to receive an amount (without interest thereon and subject to any applicable withholding tax) in cash equal to the product of (x) the Offer Price multiplied by (y) the total number of Shares subject to such Restricted Stock Award. Purchaser shall pay the foregoing consideration to the holders of Company Stock Option Awards and Restricted Stock Awards as soon as administratively practicable following the Threshold Time. However, outstanding deferred stock under the Amended and Restated Perot Systems Corporation 2006 Non-Employee Director Equity Compensation Plan will be paid upon termination of an individual's services as a director. Certain executive officers of Perot Systems may elect to convert a percentage of the consideration otherwise payable in the Merger with respect to their Company Stock Option Awards or Restricted Stock Awards into restricted stock unit awards of Dell. Shares held by stockholders who have properly demanded appraisal and complied with the provisions of the Delaware General Corporation Law (the *DGCL*) relating to dissenters' rights of appraisal (*Dissenting Shares*) will not be converted into a right to receive the Offer Price, unless such stockholder fails to perfect, withdraws or otherwise loses his, her or its right to appraisal.

A copy of the Merger Agreement is filed as Exhibits (e)(1) and (e)(2) hereto and is incorporated herein by reference.

As set forth in the Schedule TO, the principal executive offices of Dell and Purchaser are located at One Dell Way, Round Rock, Texas 78682.

Item 3. *Past Contacts, Transactions, Negotiations and Agreements.*

Certain contracts, agreements, arrangements or understandings between Perot Systems or its affiliates and (i) Perot Systems' executive officers, directors or affiliates, or (ii) Dell, Purchaser or their respective executive officers,

directors or affiliates are, except as noted below, described in the Information Statement that is attached hereto as Annex A and is incorporated herein by reference (the Information Statement), which is being furnished to Perot Systems stockholders in connection with Dell s right pursuant to the Merger Agreement to designate persons to the board of directors of Perot Systems (the Board) after acquiring Shares pursuant to the Offer,

pursuant to Rule 14f-1 under the Exchange Act. Except as described in this Statement (including in the Exhibits hereto and in Annex A hereto) or incorporated herein by reference, to the knowledge of Perot Systems, as of the date of this Statement, there are no material agreements, arrangements or understandings or any actual or potential conflict of interests between Perot Systems or its affiliates and (i) Perot Systems executive officers, directors or affiliates or (ii) Purchaser, Dell or their respective executive officers, directors or affiliates.

Agreements, Arrangements or Understandings between Perot Systems or its Affiliates and Dell or Purchaser

Non-Disclosure Agreement

On September 2, 2009, Perot Systems and Dell entered into a mutual non-disclosure agreement (the Non-Disclosure Agreement) to facilitate discussions relating to a possible acquisition in order to allow the parties to evaluate a potential transaction. Pursuant to such agreement, subject to certain customary exceptions, Perot Systems and Dell agreed to keep confidential the existence of discussions between the parties, any terms, conditions or other facts with respect to the proposed transaction and all non-public information received from the other party. Dell and Perot Systems also agreed that the non-public information furnished pursuant to the Non-Disclosure Agreement would be used solely for the purpose of evaluating and negotiating the potential acquisition.

Each of Perot Systems and Dell also agreed that for a period of one year from the date of the Non-Disclosure Agreement, except in connection with the potential transaction, neither party nor any of its controlled affiliates will, without the prior consent or invitation of the Board of Directors of the other party, directly or indirectly, engage in one or more transactions that would seek to acquire or result in the acquisition of control of the other company, whether through the beneficial ownership of securities, the purchase of assets or the influencing of the board of directors. The obligations described in this paragraph are referred to as the Standstill Obligations.

The Standstill Obligations terminate with respect to a party if a person (other than the other party or an affiliate of the other party) acquires, enters into an agreement to acquire, or publicly proposes to acquire, directly or indirectly, by tender or exchange offer, merger or otherwise, more than 50% of the voting securities of the first party (that is, the securities of the first party that are entitled generally to vote in the annual election of directors), or otherwise acquires, or enters into an agreement to acquire, or publicly proposes to acquire, the ability to control the management or policies of the first party, or enters into an agreement to acquire all or substantially all of the assets of the first party, or commences a solicitation of proxies.

In addition, the parties both agreed not to solicit for employment, or employ, certain officers or key employees employed by the other party or its subsidiaries for a period of 12 months from the date of the Non-Disclosure Agreement.

This summary of the Non-Disclosure Agreement does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the Non-Disclosure Agreement, which is filed as Exhibit (e)(4) hereto and is incorporated herein by reference.

Exclusivity Agreement

On September 4, 2009, Perot Systems and Dell entered into an Exclusivity Agreement whereby Perot Systems agreed that, among other things and until September 30, 2009, Perot Systems would not solicit or engage in discussions with any third party (other than Dell) regarding, among other things, an acquisition of beneficial ownership of more than 30% of the total outstanding voting securities of Perot Systems or the sale or transfer of 30% or more of the fair market value on a consolidated basis of the assets of Perot Systems and its subsidiaries, taken as a whole or to which 30% or more of consolidated revenues and earnings of Perot Systems and its subsidiaries, taken as a whole, are

attributable to Perot Systems' assets. Perot Systems further agreed to, and to cause its representatives to, immediately cease and terminate any existing solicitation, encouragement, discussion or negotiation with any third parties (other than Dell) with respect to any such acquisition or asset sale. However, if Perot Systems received an unsolicited bona fide proposal for an alternative transaction that the Board determined in good faith, after consultation with its outside legal counsel and financial advisors, could reasonably lead to a superior proposal, subject to certain restrictions, the Board could take steps to pursue such alternative transaction and terminate the

Exclusivity Agreement upon two business days' notice. The Exclusivity Agreement terminated upon entry into the Merger Agreement.

This summary of the Exclusivity Agreement does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the Exclusivity Agreement, which is filed as Exhibit (e)(5) hereto and is incorporated herein by reference.

The Merger Agreement

The summary of the material terms of the Merger Agreement set forth in Section 11, "The Transaction Agreements," of the Offer to Purchase and the description of the conditions of the Offer contained in Section 15, "Certain Conditions of the Offer," of the Offer to Purchase are incorporated by reference herein (the Offer to Purchase is filed as Exhibit (a)(1)(A) to the Schedule TO). The summary of the Merger Agreement contained in the Offer to Purchase is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibits (e)(1) and (e)(2) hereto and is incorporated herein by reference.

The Merger Agreement governs the contractual rights among Perot Systems, Dell and Purchaser in relation to the Offer and the Merger. The Merger Agreement has been filed as an exhibit to this Statement to provide stockholders with information regarding the terms of the Merger Agreement and is not intended to modify or supplement any factual disclosures about Perot Systems, Dell or Purchaser in Perot Systems' public reports filed with the SEC. In particular, the Merger Agreement and this summary of terms are not intended to be, and should not be relied upon as, disclosure regarding any facts and circumstances relating to Perot Systems, Dell or Purchaser. The representations and warranties contained in the Merger Agreement were made for the sole benefit of the other parties thereto and have been negotiated with the principal purpose of establishing the circumstances in which Purchaser may have the right not to consummate the Offer and the Merger, or a party may have the right to terminate the Merger Agreement, including if the representations and warranties of another party prove to be untrue due to a change in circumstance or otherwise, and to allocate risk between the parties. Stockholders should not rely on the representations and warranties as a characterization of the actual state of facts as of the date of the Merger Agreement or as of the date of this Statement since they were modified by a confidential disclosure letter. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and are qualified by information set forth in the confidential disclosure letter.

Director and Officer Indemnification and Insurance

Dell will, and will cause the Surviving Corporation and its subsidiaries to, (i) indemnify, defend and hold harmless each individual who is entitled to indemnification pursuant to the Certificate of Incorporation and Bylaws of Perot Systems, the DGCL or any Perot Systems indemnification agreement at or prior to the time the Purchaser accepts and pays for the Shares (each an "Indemnified Party," and collectively, the "Indemnified Parties") against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to any action or inaction in their capacity as a director or officer of Perot Systems or any of its subsidiaries or their serving at the request of Perot Systems or any of its subsidiaries as a director, officer, employee, agent, trustee, shareholder, partner or fiduciary of another person or entity, pension or other employee benefit plan or enterprise, in each case occurring on or before the Effective Time (including the transactions contemplated by the Merger Agreement), to the fullest extent permitted by applicable law, and, without limiting the foregoing, to the fullest extent permitted by applicable law, shall also advance expenses as incurred to the same such extent; provided, that the person to whom fees and expenses are advanced shall, if required by applicable law, provide an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification; and fulfill and honor in all respects the obligations of Perot Systems and its subsidiaries

pursuant to each indemnification agreement in effect between Perot Systems or any of its subsidiaries and each Indemnified Party; and (ii) continue any indemnification provision and any exculpation provision set forth in the Certificate of Incorporation, Bylaws or other charter or organizational documents of Perot Systems or any of its subsidiaries as in effect on the date of the Merger Agreement. In addition, at the Effective Time, Dell shall cause to be obtained prepaid (or tail) directors and officers liability insurance policies for the benefit of the Indemnified Parties at the current coverage level and scope of liability insurance

coverage as set forth in Perot Systems' current directors' and officers' liability insurance policy in effect as of the date of the Merger Agreement. Such tail insurance policies shall provide coverage through the sixth anniversary of the Effective Time, so long as the aggregate annual premium is not greater than 300% of the annual premium paid by Perot Systems for its existing directors' and officers' liability insurance policies during 2009. In the event that such 300% amount is insufficient to purchase the 2009 level of coverage, then the Surviving Corporation may spend up to that amount to purchase any lesser coverage as may be obtained with such amount.

The foregoing summary of the indemnification of directors and officers and director and officer liability insurance does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibits (e)(1) and (e)(2) hereto and is incorporated herein by reference.

Tender Agreements

Concurrently with entering into the Merger Agreement, Dell and the Purchaser entered into Tender and Voting Agreements (the Tender Agreements) with all executive officers and directors and certain principal stockholders of Perot Systems (the Tendering Stockholders). Pursuant to the Tender Agreements, the Tendering Stockholders have agreed, among other things, to tender Shares held by them on the date of the Tender Agreement or acquired after that date (or, in the case of the Perot Family Trust, it may at its option tender its Shares or hold its Shares for payment upon the Merger) (the Covered Shares) to the Purchaser in the Offer and to vote the Covered Shares in favor of the Merger. Based on information provided by the Tendering Stockholders as of September 17, 2009, an aggregate of 29,115,819 Shares (which does not include Shares that may be tendered by the Perot Family Trust), representing approximately 21.5% of the outstanding Shares calculated in the same manner as the Minimum Condition, will be tendered by the Tendering Stockholders in the Offer. In addition, such Tendering Stockholders have agreed, subject to certain exceptions, to refrain from disposing of their Shares and soliciting alternative acquisition proposals to the Merger. The Tender Agreements will terminate on the earlier of (i) the Effective Time or (ii) the termination of the Merger Agreement in accordance with its terms.

This summary of the Tender Agreements does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the Tender Agreements, the forms of which, as amended, are filed as Exhibits (e)(6) to (e)(8) hereto and is incorporated herein by reference.

Employment Agreements

Executive Offer Letters. Dell provided an offer letter to each of the individuals listed below (collectively, the Covered Executives), all of whom are currently executive officers or other officers of Perot Systems. The offer letters states the job title to be offered to such individuals upon completion of the Merger, as well as the base salary, annual target bonus, projected long-term incentive grants, the estimated value of the Dell restricted stock unit awards to be received if the Covered Executive elects to convert his Perot Systems long-term incentive awards as further described below, and the estimated value of the additional restricted stock unit awards to be received. The rollover restricted stock units and restricted stock unit awards are further described below. The following table sets forth the potential payments to the Covered Executives under the Dell employment arrangements and the value of

the restricted stock unit to be awarded following the conversion of unvested Perot Systems equity awards pursuant to elections made by the Covered Executives:

Name	Base Salary	Target Bonus	Initial RSU Grant	Rollover RSU	Potential Severance	Total
Peter A. Altabef	\$ 675,000	\$ 675,000	\$ 6,750,000	\$ 9,967,947	\$ 1,350,000	\$ 19,417,947
Scott Barnes	310,000	170,500	1,485,161	2,862,982	155,000	4,983,643
Eugene Carrick	368,000	202,400	1,939,002	2,820,410	184,000	5,513,812
Steven Curts	373,000	205,150	1,950,287	3,064,712	186,500	5,779,649
John E. Harper	442,000	243,100	2,945,903	9,223,654	221,000	13,075,657
Anurag Jain	457,745	251,760	2,170,393	1,583,979	228,873	4,692,750
Charles Lyles	480,000	264,000	2,680,810	0	240,000	3,664,810
John Lyon	235,612	94,245	1,116,869	1,487,918	117,806	3,052,450
Jeffrey Renzi	390,000	214,500	1,985,080	3,316,870	195,000	6,101,450
Thomas D. Williams	442,000	243,100	2,599,924	4,341,495	221,000	7,847,519
Total						\$ 74,129,687

This summary of the executive offer letters does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the executive offer letters, which are incorporated by reference and copies of which have been filed with the SEC as exhibits to the Schedule TO.

Executive Severance Agreements. Dell has entered into executive severance and non-compete agreements (the Executive Severance Agreements) with 10 executives (the Covered Executives) of Perot Systems, who will continue as at-will employees of Dell following the Merger. It is expected that the Executive Severance Agreements will remain in effect throughout the period the Covered Executives are employed by Dell. If a Covered Executive is terminated by Dell without cause, the Covered Executive will be entitled to receive severance benefits from Dell. Depending on the Covered Executive, the severance benefits that are payable to such Covered Executive will equal 6 to 12 months of such Covered Executive's base salary. Each Covered Executive will receive the severance benefits in a lump sum, which will be paid following the Covered Executive's execution of a severance agreement and release. As a condition to receiving benefits under an Executive Severance Agreement, a Covered Executive will have certain obligations to Dell with respect to (among other things) protection of sensitive information, confidentiality, non-competition, non-solicitation and non-disparagement. These obligations apply during the period of employment and for a 12-month period thereafter.

Rollover Restricted Stock Unit Grant. Dell has offered the opportunity for the Covered Executives to participate in a rollover restricted stock unit arrangement (the Rollover RSU Arrangement) pursuant to Dell's Amended and Restated 2002 Long-Term Incentive Plan. Under the Rollover RSU Arrangement, outstanding unvested equity awards that were granted to the Covered Executives under Perot Systems equity compensation programs (Company Awards) and would otherwise be accelerated, cancelled and cashed out in connection with the Merger may be converted on a pre-tax basis into the right to receive a special award of Dell restricted stock units (Rollover RSUs). To the extent a Covered Executive elects to convert Company Awards into Rollover RSUs, Dell will award the Covered Executive with Rollover RSUs having a value equal to twice the amount of transaction consideration that otherwise would have been provided to such Covered Executive pursuant to the converted Company Awards. A three-year graded vesting schedule applies to Rollover RSUs. Vesting is accelerated in certain situations, including when Dell terminates the Covered Executive without cause or when the Covered Executive resigns for good reason. As a condition to receiving

benefits under the Rollover RSU Arrangement, a Covered Executive will be obligated to avoid engaging in conduct detrimental to Dell. Dell also has a clawback right that it can exercise after vesting if the Covered Executive engages in conduct detrimental to Dell during the course of such executive's employment with Dell or within 12 months thereafter. This clawback right applies with respect to 50% of the value of a Covered Executive's Rollover RSU benefits (determined at the time of grant).

Standard Restricted Stock Unit Grant. Dell will offer certain employees of Perot Systems who join Dell an award of Dell restricted stock units (RSUs) pursuant to Dell's Amended and Restated 2002 Long-Term Incentive

Plan. The value of the RSU grants will be based on each individual's compensation and position with Dell. Depending on these factors, the value of RSUs granted to a particular Covered Executive can generally range from approximately 400% to 700% of the Covered Executive's base salary (with the exception of Mr. Altabef whose RSU will be equal to 1,000% of his base salary). These RSUs will vest pursuant to a four-year graded vesting schedule. Awards to any other employees can generally range up to 300% of salary and will vest over a four-year or three-year graded vesting schedule based on employee level. Vesting is accelerated in the event of the individual's death or disability while an employee of Dell, but not for any other termination, such as when Dell terminates the individual without cause or the individual resigns for good reason. As a condition to receiving RSUs, an individual will be obligated to avoid engaging in conduct detrimental to Dell. Dell also has a clawback right that it can exercise after vesting if the individual engages in conduct detrimental to Dell during the course of such individual's employment with Dell or within 12 months thereafter. This clawback right applies with respect to the entire value of an individual's RSUs (determined at the time of grant).

Executive Retention Agreements. Dell has entered into an Executive Retention Agreement (the "Retention Agreement") with Russell Freeman, Chief Operating Officer of Perot Systems, in order to provide an incentive for Mr. Freeman to perform transitional services for Dell following the Merger. Pursuant to the Retention Agreement, Mr. Freeman will serve as an at-will employee of Dell following the Merger (the "Service Period"). It is expected that the Service Period will comprise six months, although it may be shortened or extended pursuant to the terms of the Retention Agreement. In exchange for providing services, Mr. Freeman will be paid a bi-weekly base salary of \$19,615 and will be eligible to participate in certain employee benefit plans maintained by Dell. However, Mr. Freeman will not be permitted to participate in any of Dell's incentive bonus or long-term incentive plans. At the end of the Service Period (or if Mr. Freeman's employment is terminated before then without cause, he resigns for good reason or there is an early termination of the agreement), Mr. Freeman will be entitled to receive a retention bonus of \$757,000. As a condition to receiving benefits under the Retention Agreement, Mr. Freeman will have certain obligations to Dell with respect to (among other things) protection of sensitive information, confidentiality, non-competition, non-solicitation and non-disparagement and the use and return of Dell property. These obligations apply during the period of employment and for a 12-month period thereafter. If Mr. Freeman's employment is extended at the end of the Retention Period, he will receive a monthly retention bonus and will continue to receive his bi-weekly base salary and the foregoing employee benefits. It is expected that Dell will offer to enter into executive retention agreements with two additional officers of Perot Systems.

Standard Employment Agreements. Dell has a form of employment agreement (the "Form Agreement") that is entered into by all employees of Dell regardless of level. Thus, all Perot Systems employees and executives who join Dell by virtue of the Merger ("Transferred Employees") are to enter into the Form Agreement at the Effective Time. The Form Agreement includes a number of acknowledgments by the Transferred Employee regarding (among other things) (i) at-will employment status, (ii) obligations regarding the use and development of intellectual property, inventions and copyrightable materials and (iii) responsibilities relating to the non-disclosure of confidential information, proprietary information and controlled technology and software. The obligations relating to these acknowledgments generally are limited to the period of the employee's employment with Dell. The Form Agreements do not specify the compensation and/or benefits provided to Transferred Employees.

These summaries of the Dell employment arrangements do not purport to be complete descriptions of the terms and conditions thereof and are qualified in their entirety by reference to the employment arrangements, which are filed as Exhibits (e)(27) to (e)(42) hereto and are incorporated herein by reference.

Non-Competition Agreement

Additionally, in connection with the execution of the Merger Agreement, Ross Perot and Ross Perot, Jr. have signed noncompetition and nonsolicitation agreements ("Non-Competition Agreements") with Perot Systems and Dell that

limit their ability to compete with Perot Systems or solicit its employees or customers for a period ending December 31, 2014. If the Merger Agreement is terminated prior to the date the Shares are accepted and paid for pursuant to the Offer, such agreements will not become effective and will have no force or effect.

This summary of the Non-Competition Agreements does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the Non-Competition Agreements, which are filed as Exhibits (e)(43) and (e)(44) hereto and are incorporated herein by reference.

License Agreement

In connection with the execution of the Merger Agreement, Perot Systems Family Corporation, a Texas corporation, Ross Perot, Ross Perot, Jr. (collectively, Licensor) and Perot Systems entered into the Third Amended and Restated License Agreement, dated as of September 20, 2009 (the License Agreement), amending the prior license previously in place. Pursuant to the License Agreement, the Licensor grants Perot Systems and its affiliates an exclusive, royalty-free license to use Perot Systems and Perot in connection with Perot Systems current businesses, products, services and charitable activities, and its future operations and activities resulting from the expansion of, and the integration with, Dell s services and businesses. The License Agreement became effective immediately upon execution and will continue until the earlier of (i) the date that is five years from the date the Shares are accepted for payment by Purchaser pursuant to the Offer or (ii) the date of any termination of the License Agreement for cause. Notwithstanding the foregoing, the License Agreement shall terminate automatically and without further action by Licensor or Perot Systems in the event that the Merger Agreement is terminated in accordance with its terms, in which event the previous license agreement will be reinstated.

This summary of the License Agreement does not purport to be a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the License Agreement, which is filed as Exhibit (e)(10) hereto and is incorporated herein by reference.

Agreements, Arrangements or Understandings between Perot Systems or its Affiliates and Perot Systems or its Executive Officers and Directors

Information Statement

Certain agreements, arrangements or understandings between Perot Systems or its affiliates and certain of Perot Systems or its executive officers and directors are described in the Information Statement, which is incorporated by reference herein.

Interests of Certain Persons

In considering the recommendation of the Board to tender Shares in the Offer, stockholders should be aware that Perot Systems executive officers and directors have agreements or arrangements that may provide them with interests that may differ from, or be in addition to, those of stockholders generally. As described below, the directors and officers of Perot Systems have certain indemnification rights post-Merger, the transactions contemplated by the Merger Agreement will constitute a change in control of Perot Systems for purposes of the change in control employment agreements with executive officers that could entitle an executive officer to severance payments and other benefits. The Board was aware of these agreements and arrangements during its deliberations of the merits of the Merger Agreement and the transactions contemplated therein and in determining to make the recommendation set forth in this Statement.

Equity and Equity-Based Awards Granted under Perot Systems Equity Plans and Change in Control Agreements

2006 Non-Employee Director Equity Compensation Plan. Pursuant to the Amended and Restated Perot Systems Corporation 2006 Non-Employee Director Equity Compensation Plan, as amended from time to time (the Director Equity Plan), deferred stock awards may be provided to non-employee directors of Perot Systems. The Board has

approved an amendment to the Director Equity Plan which provides it with the authority to cancel any outstanding awards thereunder in exchange for a cash payment in connection with a change in control. Accordingly, in connection with the Merger, deferred stock awards that are outstanding under the Director Equity Plan immediately prior to the Threshold Time, will be cancelled immediately following the Threshold Time, and converted into the right to receive an amount in cash equal to the product of (i) the Offer Price multiplied by (ii) the

total number of Shares subject to such award. Purchaser will pay the foregoing consideration to the holders of such deferred stock awards at the time(s) specified in the Director Equity Plan.

1996 Non-Employee Director Stock Option/Restricted Stock Plan. Pursuant to the Amended and Restated Perot Systems Corporation 1996 Non-Employee Director Stock Option/Restricted Stock Incentive Plan, as amended from time to time (the Director Stock Plan), stock option and restricted stock awards may be provided to non-employee directors of Perot Systems. The Board has approved an amendment to the Director Stock Plan which provides it with the authority to cancel any outstanding vested awards thereunder in exchange for a cash payment in connection with a change in control. Accordingly, in connection with the Merger, vested stock option awards granted under the Director Stock Plan that are outstanding immediately prior to the Threshold Time will be cancelled immediately following the Threshold Time, and the holder of such an award will be entitled to receive an amount in cash equal to the product of (i) the excess, if any, of the Offer Price over the exercise or base price, as applicable, per share of each such award, multiplied by (ii) the total number of Shares subject to such award.

2001 Long-Term Incentive Plan and Sub-Plan of Perot Systems TSI (India) Limited. Pursuant to the Perot Systems 2001 Long-Term Incentive Plan, as amended from time to time (the 2001 LTIP) and the Perot Systems 2001 Long-Term Incentive Plan Sub-Plan of Perot Systems TSI (India) Limited (formerly called HCL Perot Systems Limited), as amended from time to time (the Sub-Plan), equity based compensation awards (including stock options, stock appreciation rights, restricted stock and restricted stock units) may be provided to employees, executives and directors of Perot Systems. Stock option awards and stock appreciation right awards (setttable in Common Stock) that are outstanding under the 2001 LTIP and the Sub-Plan immediately prior to the time that Dell acquires a specific level of ownership in the Company for certain tax purposes (the Threshold Time) will, to the extent not vested, vest and all such vested awards will be cancelled immediately following the Threshold Time, and the holder of such an award will be entitled to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the excess, if any, of the Offer Price over the exercise or base price, as applicable, per share of each such award, multiplied by (ii) the total number of Shares subject to such award. In addition, unvested restricted stock unit awards and restricted stock awards that are outstanding under the 2001 LTIP and the Sub-Plan immediately prior to the Threshold Time will vest and be cancelled immediately following the Threshold Time, and converted into the right to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the Offer Price multiplied by (ii) the total number of Shares subject to such award. Purchaser will pay the foregoing consideration to the holders of such equity based compensation awards as soon as administratively practicable following the Threshold Time.

1991 Stock Option Plan. Pursuant to the Perot Systems Corporation 1991 Stock Option Plan, as amended from time to time (the 1991 Plan), stock option awards may be provided to employees and executives of Perot Systems. The Board has approved an amendment to the 1991 Plan which provides it with the authority to accelerate the vesting of outstanding awards under the 1991 Plan and to cancel any such outstanding vested awards thereunder in exchange for a cash payment in connection with a change in control. Accordingly, in connection with the Merger, stock option awards granted under the 1991 Plan that are outstanding immediately prior to the Threshold Time will, to the extent not vested, vest and all vested awards will be cancelled immediately following the Threshold Time, and the holder of such an award will be entitled to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the excess, if any, of the Offer Price over the exercise or base price, as applicable, per share of each such award, multiplied by (ii) the total number of Shares subject to such award. Purchaser will pay the foregoing consideration to the holders of such stock option awards as soon as administratively practicable following the Threshold Time.

Restricted Stock Plan. Pursuant to the Perot Systems Corporation Restricted Stock Plan, as amended from time to time (the Stock Plan), restricted stock awards may be provided to employees and executives of Perot Systems. The Board has approved an amendment to the Stock Plan which provides it with the authority to accelerate the vesting of

outstanding awards under the Stock Plan and to cancel any such outstanding vested awards thereunder in exchange for a cash payment in connection with a change in control. Accordingly, in connection with the Merger, unvested restricted stock awards that are outstanding under the Stock Plan immediately prior to the Threshold Time will vest and all vested awards will be cancelled immediately following the Threshold Time, and converted into the right to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the Offer Price multiplied by (ii) the total number of Shares subject to such award. Purchaser will pay the foregoing

consideration to the holders of such restricted stock awards as soon as administratively practicable following the Threshold Time.

Amended and Restated 1999 Employee Stock Purchase Plan and Amended and Restated 1999 Employee Stock Purchase Plan/Non-US. Pursuant to the Perot Systems Corporation Amended and Restated 1999 Employee Stock Purchase Plan, as amended from time to time (the US ESPP Plan) and the Perot Systems Corporation Amended and Restated 1999 Employee Stock Purchase Plan/Non-US (and any sub-plans thereunder), as amended from time to time (the Non-US ESPP Plan), stock option awards may be provided to employees and executives. The Board has approved the suspension of the US ESPP Plan and Non-US ESPP Plan effective for offering periods occurring on and after October 1, 2009, which immediately follows the close of the current offering period thereunder. Accordingly, the US ESPP Plan and Non-US ESPP Plan will be suspended effective October 1, 2009. In addition, such other actions shall be taken pursuant to the US ESPP Plan and Non-US ESPP Plan, including, but not limited to, the waiver of any restrictions relating to the delivery of Shares thereunder, to otherwise facilitate the purchase of such Shares by Purchaser or Dell, as the case may be.

Change in Control Agreements. Pursuant to the letter agreements between Perot Systems and certain executives, officers and directors of Perot Systems (the Change in Control Agreements), certain equity, cash and other in-kind benefits (such as continued medical benefit coverage) may be provided to executives, officers and directors of Perot Systems in connection with a change in control. The Board has approved the amendment to the Change in Control Agreements (i) to provide for the vesting and cancellation of all outstanding equity awards subject to the Change in Control Agreements in exchange for a cash payment immediately following the Threshold Time, (ii) to eliminate any termination of employment preconditions to receiving such accelerated equity benefits and severance benefits pursuant to the Change in Control Agreements, and (iii) to make corresponding changes to the remaining provisions of the Change in Control Agreements, including but not limited to the continued medical benefit, tax-gross up and indemnification provisions. Accordingly, outstanding stock option awards and stock appreciation right awards (setttable in Common Stock) that are subject to the Change in Control Agreements immediately prior to the Threshold Time will, to the extent not vested, vest and all vested awards will be cancelled immediately following the Threshold Time, and the holder of such an award will be entitled to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the excess, if any, of the Offer Price over the exercise or base price, as applicable, per share of each such award, multiplied by (ii) the total number of Shares subject to such award. In addition, outstanding unvested restricted stock awards and restricted stock unit awards that are subject to the Change in Control Agreements immediately prior to the Threshold Time will vest and be cancelled immediately following the Threshold Time, and converted into the right to receive an amount (subject to any applicable withholding tax) in cash equal to the product of (i) the Offer Price multiplied by (ii) the total number of Shares subject to such award. Purchaser will pay the foregoing consideration to the holders of such equity based compensation awards as soon as administratively practicable following the Threshold Time. In addition, Purchaser will pay cash severance benefits to each executive, officer and director entitled to cash severance benefits under the Change in Control Agreements as soon as administratively practicable following the Threshold Time or the Effective Time.

These summaries of the Perot Systems equity plans and change in control agreements do not purport to be a complete description of the terms and conditions thereof and are qualified in their entirety by reference to the Perot Systems equity plans and change in control agreements, which are filed as Exhibits (e)(11) to (e)(25) and Exhibit (e)(26) hereto and are incorporated herein by reference.

**Expected Payments to Perot Systems Non-Employee Directors
Under Perot Systems Equity Plans**

	1996 Non-Employee Director Stock Option / Restricted Stock Plan	2006 Non-Employee Director Equity Compensation Plan	Total Value of Equity Awards(1)
Steven Blasnik	\$ 464,000	\$	\$ 464,000
John S.T. Gallagher	522,400		522,400
Carl Hahn	787,600		787,600
DeSoto Jordan	366,160		366,160
Caroline (Caz) Matthews		150,000	150,000
Thomas Meurer	522,400	150,000	672,400
C.H. Moore, Jr.	395,600		395,600
Anthony Principi	125,280		125,280
Anuroop (Tony) Singh	250,240		250,240

- (1) Total Value of Equity Awards includes the value of Company Stock Option Awards (whether vested or unvested) and Restricted Stock Awards outstanding as of November 1, 2009 that will be converted into the right to receive a cash payment in connection with the consummation of the transaction. This number assumes that no vested or vesting Company Stock Option Awards will be exercised prior to the Threshold Time.

**Expected Payments to Perot Systems Executive Officers Under
Perot Systems Equity Plans and Change in Control Agreements**

Name	Salary	Bonus	Severance Pro-Rata Bonus(1)	Health	Total Severance	Gross-Up including Excise Tax	Value of Equity Awards(2)
Peter A. Altabef	\$ 1,350,000	\$ 1,350,000	\$ 675,000	\$ 10,000	\$ 3,385,000	\$ 2,249,195	\$ 24,304,500
Russell Freeman	1,020,000	816,000	510,000	10,000	2,356,000	1,328,244	15,648,830
John E. Harper	780,000	546,000	390,000	10,000	1,726,000	1,046,004	5,568,261
Ross Perot, Jr.	1,150,000	1,150,000	575,000	10,000	2,885,000	1,194,087	35,771,400
Jeffrey Renzi	690,000	483,000	345,000	10,000	1,528,000	720,221	4,486,305
Thomas D. Williams	780,000	546,000	390,000				