

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2010

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

Commission file number: 1-31949

INX Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State of Incorporation)

76-0515249

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

1955 Lakeway Drive, Lewisville, TX

(Address of principal executive offices)

75057

(Zip code)

Registrant's telephone number: (469) 549-3800

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

Title of Each Class

Common stock, par value \$0.01

Name of Each Exchange on Which Registered

OTC Bulletin Board

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

The aggregate market value of the voting stock held by non-affiliates of the registrant, based upon the closing price of the common stock on June 30, 2010, as reported on the NASDAQ Global Market, was approximately \$37,053,581.

The number of shares of common stock, \$0.01 par value, outstanding as of May 16, 2011 was 9,669,872.

DOCUMENTS INCORPORATED BY REFERENCE: None

**INX Inc. and Subsidiaries**  
**FORM 10-K**  
**For the Year Ended December 31, 2010**

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## Explanatory Note

### Overview of Restatement

In this Annual Report on Form 10-K, INX Inc. (the “Company” or “INX”):

1. Restates its Consolidated Balance Sheet as of December 31, 2008, and the related Consolidated Statements of Operations, Stockholders’ Equity and Cash Flows for the year ended December 31, 2008, and the related disclosures in Notes to Consolidated Financial Statements;
2. Restates its Unaudited Quarterly Financial Data for the first three quarters in the year ended December 31, 2008; and
3. Amends its Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) as it relates to the year to date quarterly information previously provided in Form 10-Q for each quarter in the year ended December 31, 2009;

Contemporaneously with the filing of this Annual Report, the Company is also restating the Condensed Consolidated Financial Statements for the quarters ended March 31, 2009, June 30, 2009 and September 30, 2009 as presented in the Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010.

*[Amounts are presented in thousands except share, per share, par value and percentages in all parts of this Annual Report on Form 10-K, except in Part III, the exhibits and unless otherwise stated.]*

### Background on the Restatement

As previously disclosed in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on March 26, 2010, the Company announced that it was delaying its fourth quarter earnings release (for the year ended December 31, 2009) and that it would not file its Annual Report on Form 10-K for the fiscal year 2009 by its due date in order to allow the Company additional time for the reexamination of its revenue recognition under Accounting Standards Codification (ASC) 605-25, Revenue Recognition, Multiple-Element Arrangements, previously referred to as Emerging Issues Task Force No. 00-21 (“EITF 00-21”), “Revenue Arrangements with Multiple Deliverables”.

In the Company’s Current Report on Form 8-K filed with the SEC on June 21, 2010, the Company announced that the Audit Committee of its Board of Directors, upon the recommendation of management, had determined that its previously issued financial statements included in its Annual Report on Form 10-K/A for the fiscal year ended December 31, 2008, its Quarterly Report for the quarter ended March 31, 2009 on Form 10-Q/A and for the quarters ended June 30, 2009 and September 30, 2009 on Form 10-Q, should no longer be relied upon as a result of certain errors affecting the timing of recognition of revenues and costs of revenues.

The restated financial statements correct the following errors in the recognition of revenue associated with the proper:

1. Application of EITF 00-21, affecting the timing and presentation of revenue recognized (“00-21 Adjustments”) for the:
  - a. Proper determination of contracts to which EITF 00-21 was applicable and the related units of accounting for such contracts,
  - b. Proper determination of linkage between contracts, reflecting aggregation of single contracts into multiple element arrangements since they were negotiated as a package, and
  - c. Proper assessment of whether or not the Company had vendor specific objective evidence (“VSOE”) of the fair value of the various deliverables within arrangements containing multiple deliverables, as well as (i) the timing of revenue recognition based upon the relative fair value of the deliverables within the arrangement for deliverables for which we are able to establish the fair value. (ii) the allocation of the total arrangement consideration between the various elements of the arrangement based upon the relative fair value of the deliverables within the arrangement for multi-element arrangements, and, (iii) the deferral of revenue for the entire arrangement in situations where the arrangement contained remaining undelivered deliverables for which we are not able to establish the fair value.
2. Identification of customer contracts with special customer acceptance terms which require deferral of revenues and related costs of revenues and commissions until customer acceptance was obtained (“Special Acceptance Terms”),
3. Identification of contract shipping terms resulting in the incorrect timing of recognition of revenues and related costs of sales and commissions (“Shipping Terms”), and
4. Identification of products that are maintenance, support, and installation services provided by third parties as the primary obligor of the service, which requires presentation of the revenue reported by the Company net of the cost of the services provided by the third party (“Net Presentation”).

In addition, the Company also determined that an error was made in the accounting for contingent consideration (“earn-out”) paid in August 2006 in connection with the acquisition of substantially all of the assets of InfoGroup Northwest, Inc. (“InfoGroup”). The InfoGroup assets were acquired under an asset purchase agreement in June 2005 and most InfoGroup employees became employees of the Company. As part of the earn-out provision, cash and common stock were paid by the Company to the InfoGroup shareholder based upon the InfoGroup branch offices achieving specific financial performance targets, which were recorded as goodwill. The selling shareholder decided to give a portion of the earn-out to former employees of InfoGroup who had become employees of the Company as a result of the acquisition (“Employee Payments”). Under GAAP, including guidance promulgated by the SEC, actions of economic interest holders in a company may be imputed to the company itself. When a selling shareholder gives acquisition-related payments to Company employees who were not selling shareholders, these payments are viewed as resulting from services that are assumed to have benefited the Company and therefore must be further recorded as a non-cash charge to compensation expense. In effect, the Employee Payments are in substance a separate transaction from the Company’s acquisition of the InfoGroup assets, which should have been recorded as a separate non-cash charge to compensation expense. The Employee Payments were therefore required to be reflected in the consolidated financial statements for the year ended December 31, 2006 as non-cash compensation expense in the amount of \$672, and the selling shareholder was deemed to have made a corresponding capital contribution to the Company. The compensation expense is a non-cash charge because the payments were made directly by the selling shareholder from the acquisition proceeds received from the Company. The Company did not expend additional cash with respect to the compensation charge. The correction had no effect on total stockholders’ equity at December 31, 2006.

The adjustments made as a result of the restatement are more fully discussed in Note 2, Restatement of Previously Issued Financial Statements, of the Notes to Consolidated Financial Statements in Part II, Item 8 and Management’s Discussion and Analysis of Financial Condition and Results of Operations in Part II, Item 7 of this Annual Report. For a description of the control deficiencies identified by management as a result of our internal reviews, and management’s plan to remediate those deficiencies, see Part II, Item 9A, Controls and Procedures.

Previously filed Annual Reports on Form 10-K and quarterly reports on Form 10-Q for the periods affected by the restatement have not been amended. Accordingly, investors should no longer rely upon the Company’s previously released financial statements for these periods and any earnings releases or other communications relating to these periods.

## PART I

### Item 1. Business.

#### Special Notice Regarding Forward-Looking Statements

This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 relating to future events or our future financial performance including, but not limited to, statements contained in “Part I, Item 1. Business” and “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Readers are cautioned that any statement that is not a statement of historical fact, including but not limited to, statements which may be identified by words including, but not limited to, “anticipate”, “appear”, “believe”, “could”, “estimate”, “expect”, “hope”, “indicate”, “intend”, “likely”, “may”, “might”, “plan”, “potential”, “seek”, “should”, “will”, “would”, and other variations or negative expressions thereof, are predictions or estimations and are subject to known and unknown risks and uncertainties. These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

Important factors that may affect these projections or expectations include, but are not limited to: the behavior of financial markets including fluctuations in interest or exchange rates; continued volatility and further deterioration of the capital markets; the impact of regulation and regulatory, investigative, and legal actions; strategic actions, including acquisitions and dispositions; future integration of acquired businesses; future financial performance of major industries which we serve; the loss of a significant client or significant business from a client; difficulties in completing a contract or implementing its provisions; and numerous other matters of national, regional, and global scale including those of the political, economic, business, and competitive nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. The “Risk Factors” set forth in Part I, Item 1A of this report could also cause actual results to differ materially from the forward-looking statements.

#### General

We are a technology solutions provider focused on delivering three broad categories of technology infrastructure to enterprise customers. Our solutions architectures consist of three broad categories of technology infrastructure: network infrastructure, unified communications and collaboration (“UC&C”) and data center. Our value-added proposition is delivered in the form of combining our professional services with select manufacturer’s products to address our customers’ needs. Our professional services include consulting, planning and design engineering, implementation engineering and system integration. We provide technology infrastructure solutions for enterprise-class organizations such as corporations, healthcare organizations, educational institutions, and Federal, state and local governmental agencies.

Network infrastructure is typically the foundation for the other two categories and usually includes data transport such as basic network routing and switching, wireless networking, WAN optimization and acceleration, and network security solutions. UC&C solutions consist of Internet Protocol (“IP”) network-based voice and video communication solutions as well as integrated software productivity applications such as “presence”, instant messaging, contact center applications, portals and middleware. Data center solutions consist of 10 Gigabit Ethernet (“10GbE”) data center network infrastructure, virtualized server infrastructure solutions including data center servers and data center server virtualization software, network based storage solutions such as network attached storage (“NAS”) and storage area networks (“SAN”) as well as systems management and administration software solutions.

Our network infrastructure and UC&C solutions are primarily based on Cisco Systems, Inc. (“Cisco”) technology. Cisco is a market leader for UC&C systems for enterprise-class organizations. Our network storage solutions are primarily based on NetApp, Inc. (“NetApp”) and EMC Inc. (“EMC”) network based storage technology. Our data center networking solutions are primarily based on Cisco’s Nexus technology. Our data center server solutions are primarily based on Cisco’s Unified Computing technology. Our virtualization solutions are based primarily on VMware, Inc. (“VMware”) technology. While our solutions also include products from other manufacturers or software vendors, products from these four manufacturers make up over 90% of our total product revenue.

Our specialization and expertise enables us to effectively compete in the marketplace. Our skills and abilities are examined and evaluated extensively and routinely by these four key vendors through specialized training, certification and representational authorization. Additionally, we have significant experience planning, designing, integrating, implementing and supporting these enterprise technology solutions, all of which is the basis for our ability to deliver superior solutions to our customers.

We utilize a comprehensive customer engagement methodology, which we refer to as our Strategic Delivery Framework (“SDF”), which is a framework for managing the evaluation of the customer’s needs, and planning and implementing a project. We believe this framework is a competitive advantage since it ensures a very thorough, consistent and efficient process of planning, design and implementation of our solutions. The result is a solution which addresses the customer’s business needs more completely and minimizes the risk of a failed solution design since the planning process is so thorough. This in the end provides our customers solutions that provide better business value at lower risk.

## Industry Overview

We are involved in providing our customers with technology infrastructure solutions in three broad categories of technology infrastructure: network infrastructure, UC&C, and data center.

### Network Infrastructure

IP is the network data communications protocol deployed in modern enterprise organization networks and includes both local area network (“LAN”) and wide area network (“WAN”) Ethernet network technology. The IP network has become the platform for virtually all enterprise communications, including data communications between systems within an organization, between the organization and the internet, email communications, voice communications, and, increasingly, video communications. The convergence of data, voice, and video into a single seamless IP communications infrastructure provides improved productivity and cost savings. The foundation of a converged communications platform is a robust, secure, high-performance, high-availability IP network infrastructure.

In addition, there is a trend towards connecting NAS and SAN data storage within data centers using 10GbE IP networking using iSCSI and Fibre Channel over Ethernet (“FCoE”) technology. FCoE allows IP network and SAN data traffic to be consolidated using a single high throughput, low latency network switch, reducing a variety of hardware, software, utility and maintenance costs. The use of iSCSI and FCoE technology to consolidate data center networks onto a single IP network, together with server virtualization technology, are key factors driving how data centers are designed and operated.

The increasing complexity of the IP network and network attribute requirements is creating demand for expertise in the design and support of network infrastructure for all enterprise organizations. Organizations need to optimize their network architecture to achieve the required performance levels for their various network applications, data flows, and number of users.

The network security market includes firewall, unified threat management, intrusion detection and prevention, and virtual private network solutions. Network security is a central component of information and communications technology architecture. Traditionally, much of the focus has been on securing the network edge through firewalls on Internet and Extranet connections. Now the expectation is for security to be applied pervasively throughout the entire network infrastructure. Among the security issues facing enterprise organizations today are the following:

- Virtualization of the data center is both improving security and introducing new security risks.
- Attacks can be initiated through freely available tools from inside the network or the internet and mobile devices can become infected while outside the controls of the network and reconnect behind the firewall.
- Wireless solutions and unused network ports that are not properly secured create network access points that can be compromised.
- Many organizations have policies driven by regulatory and compliance requirements (such as HIPPA and Sarbanes-Oxley) that dictate enhanced security stances.

As security needs increase, the complexity and design requirements for security solutions also increase. Well designed enterprise-class security solutions address the enterprise organizations’ needs by weaving security throughout the information and communications technology infrastructure going much farther than simply securing the network edge.

IP network infrastructure has become a technology environment in which there is a dependency between the component parts of the network that maintain relationships through time and change; a more fully cooperating system that is flexible, stable, predictable and more easily managed. This has caused IP network infrastructure to evolve from route-specific performance to endpoint-to-endpoint performance, from route-level resiliency to service-level resiliency and from box-level management to system-wide management.

As the network evolves to perform higher-level functions, the complexity of the IP network infrastructure and its architecture, by necessity, is increasing. As the network becomes more complex, the role of network architecture design, business process-mapping, policy decision making, implementation and ongoing service and support of the network play increasingly important roles.

Enterprise organizations are becoming more reliant on the IP network as a mission-critical component of their operations. It is becoming more important and commonplace to have all network devices remotely monitored and managed so that issues can be identified and resolved before they become problems, and problems in turn become network failures. Research firm IDC expects monitoring technologies to continue advancing rapidly to address security and interference disruptions.

International Data Corporation (“IDC”) reports that network infrastructure upgrades ranked as the number two priority as far as enterprise IT equipment spending in 2010, followed by virtualization. The total worldwide market for enterprise Ethernet network switches and routers, which together make up the majority of the total market as measured by IDC, was approximately \$29.7 billion in 2010 according to IDC, with approximately 41% of the total market consisting of the North American market. IDC expects the North American market for enterprise network infrastructure to grow at a compound annual growth rate (“CAGR”) of 7.9% between 2009 and 2015.

### **Unified Communications and Collaboration**

IP telephony and Voice-over-IP (“VoIP”) are terms for technology that uses an organization’s IP network to perform voice communications that have traditionally been conducted by conventional private branch exchange (“PBX”) telephone systems used by enterprises and by the public switched telephone network (the “PSTN”). IP telephony uses IP network infrastructure and software running on a server to handle the call processing (telephone call set-up and tear-down), commonly referred to as a “soft switch” to replace the telephony functions performed by an organization’s PBX telephone system. VoIP is the process of utilizing the IP network to perform voice communications. UC&C is a unified environment for e-mail, voicemail, instant messaging, voice and video communications functionality on a single, unified platform or system. A converged communications model enables data, voice and video communications to be conducted on a single IP network infrastructure.

Implementation of UC&C on the IP network can result in both significant long-term cost savings and increased productivity to enterprises. Some of the potential long-term savings that an enterprise might experience include:

- Elimination of redundant traditional telephone line circuits and cabling systems;
- Reduced cost resulting from circuit consolidation to few or only on point of interface to the PSTN;
- More efficient support of telephone and data functions by a single support organization rather than multiple service providers and in-house support departments;
- Simplified administration and lower costs for moves, adds and changes because an IP telephony handset can be moved or changed within an enterprise without rewiring the PBX or re-programming the telephone number; and
- Elimination or reduction of long distance toll charges as internal voice communications are moved to a fixed-cost data network that often already exists between the enterprise’s remote facilities.

IP telephony systems, including management systems, voice gateways, and messaging systems, are easier to set up than traditional PBX telephone systems and they save time and boost productivity. Implementation of IP telephony is commonly an enterprise organization’s first move toward a converged communications solution.

Unified messaging solutions allow a user to decide how and when they will receive messages. Unified messaging allows for retrieval of any communication form by any method, such as accessing voice messages from a computer or text e-mail, converted to speech, over the phone. This provides a greater level of control over communications, improving organizational productivity. Unified messaging is typically an enterprise organization’s second move toward a more completely converged communications solution.

Video communications that are seamlessly integrated into voice communications are available, but are not yet popular, in part because video communications require more expensive “endpoints” used on the office desktop and use substantial network bandwidth. Over time, as network bandwidth improves (which requires network upgrades), video compression technology is further improved, and as high quality touch screen video endpoints become less expensive, integrated voice and video communications will become more popular.

IP telephony as implemented by most enterprises often requires upgraded or new IP network infrastructure. Older networks designed solely for data communications are inadequate to accommodate an appropriate “quality of service” for IP telephony. To meet the demands of voice communications delivered across an IP network, the network infrastructure must be able to distinguish between data communication packets and voice communication packets. It must be set up to be capable of prioritizing and allocating the use of system resources between voice and data while maintaining an appropriate quality of service. As video becomes an increasingly popular component of business communications, network load will increase substantially due to the substantial network bandwidth required for video communications, driving more network routing and switching upgrades.

IDC measures and reports on various components of the overall UC&C market. IDC believes the total worldwide market for enterprise “IP PBX” (IP telephony voice systems) and related phones (telephone handsets) was approximately \$6.9 billion in 2010 and they expect a CAGR of approximately 9.4% between 2009 and 2014. IDC believes the total worldwide market for videoconferencing, including both standard video conferencing rooms and desktop videoconferencing, as well as telepresence systems, was approximately \$3.0 billion in 2010 and they expect a CAGR of approximately 18.4% between 2010 and 2015. They believe the total worldwide market for enterprise telepresence systems was approximately \$842 million in 2010 and expects that market to grow at a CAGR of 29.2% between 2010 and 2015.

### **Data Center**

Enterprises are increasingly adopting an IT infrastructure environment in which a combination of software application functionality is delivered to end users through a virtualized, hosted methodology where their IP network and the Internet are used as the means of connectivity to the application (“Cloud Computing”) and using remotely replicated servers and storage for seamless disaster recovery.

The data center is being transformed by the virtualization of server and desktop computing resources. VMware is the primary software vendor in the virtualization market. Virtual server software made by VMware, the product we use for our virtualization solutions, provides a hardware emulation layer between the physical server and the operating system and related stacks of applications. Computing resources are allocated to each virtual computer based on rules established through the virtualization software to satisfy the needs of each server operating environment. Therefore, operating system software and applications that were previously incompatible can share the same physical server.

Virtualization of the physical servers allows the physical servers to be used by any number of VMware virtual servers. Similarly, network based storage allows the virtual servers to access storage that is not part of a physical server. Data center virtualization creates demands on the data center network used to communicate between the various server, storage, security and other devices in the virtualized data center. The use of iSCSI and FCoE for data center connectivity is driving demand for upgrades of data center network infrastructure using 10GbE networking technology.

Virtualization technology is reducing server sprawl by ending the prior practice of running a single application on a single particular physical server. As a consequence, virtualization is also solving the substantial underutilization that occurred in the prior one-server-for-one-application environment. Furthermore, virtualization software management tools enable enterprises to add, change or remove physical servers without any application downtime since the organization can move virtual servers from one physical server to another physical server while an application is running. Migrating to a virtualized data center environment enhances reliability and redundancy of the data center while improving new application turn up time. Since a physical server is no longer required to run a new application, turning up a new application can be done using a virtual server, which can be created in minutes. Virtualization is contributing to substantially increased data center network loads due to the requirement to send data across the network between the various physical servers that are processing data in the virtualized server environment and the shared NAS and SAN devices where data is stored in a virtualized data center environment.

Storage in a virtualized data center is typically not part of any particular physical server since the applications that need to access the data might be actually running on any one of a number of different physical servers that are being utilized by the virtual server upon which the application is running. Shared network storage also allows enterprises to more efficiently consolidate data and manage, replicate, and mirror information in order to eliminate points of failure that occur during downtime or loss of information, and to provide seamless failover capability. The need for improved productivity as well as regulatory requirements have also accelerated the need for enterprise organizations to protect data, rapidly recover applications, and maintain uninterrupted access to information. Networked storage improves availability and scalability, facilitates a tiered-storage approach, and reduces storage management complexity and cost.

Information, or data, can be classified by criticality, age, and the level of accessibility required. Such a lifecycle-oriented management approach allows an organization to prioritize and make intelligent decisions about the logistics and economics of how to manage different data types. The use of remote data duplication and replication for the purpose of data backup and automated and transparent failover capability, which is a huge improvement over typical "backup" operations, requires transporting huge volumes of data outside of the data center, across the LAN and WAN network fabric of an organization in order to transport the data to another physical data center location. This is another source of rapidly increasing network load, and data replication is a driver of increased demand for NAS and SAN capacity.

These trends are creating substantial change in the market for data center solutions, which are reflected in the forecasted markets for data center networking technologies, NAS and SAN storage systems and server. IDC estimates the total North American market for datacenter networking technologies, including datacenter Ethernet switching, Fibre Channel switching, InfiniBand switching, datacenter Layer 4-7 switching and WAN application delivery, was approximately \$3.7 billion in 2010 and estimated growth at a CAGR of 5.7% between 2009 and 2014. While the overall total market is estimated to grow, the market for some technologies within the overall market is expected to decrease in size, while others are expected to grow rapidly, in part due to replacing technologies that are becoming less popular. For instance, as 10GbE continues to gain in popularity over Fibre Channel for connectivity of NAS and SAN storage devices, the total worldwide market for Fibre Channel switches used in NAS and SAN storage device connectivity is estimated to experience a CAGR of negative 2.2% between 2010 and 2015, according to IDC, while the market for Layer 2-3 Ethernet switches used in data center networking is estimated to grow 9.2% over the same period. Similarly, the market for Fibre Channel Host Bus Adaptors used to connect servers to Fibre Channel networks is estimated to experience negative growth of 1.5% while the market for 10GbE Converged Network Adaptors used to connect servers to 10GbE is estimated to grow 66.0% over the same period.

IDC estimates the worldwide market for NAS and SAN enterprise storage systems (the total market excluding direct attached storage and mainframe computing storage) was approximately \$18.5 billion in 2010 and they expect growth of approximately 10.6% between 2009 and 2014. However, the portion of this market excluding Fibre Channel SAN systems, which, according to IDC, made up approximately 54.8% of the total market in 2010, is expected to experience growth of approximately 19.0% between 2009 and 2014 according to IDC.

IDC estimates that the Americas total market for servers running the Windows server operating system, which is the segment of the total server market measured by geographic region and operating system that we believe most closely approximates our target market, was \$9.4 billion in 2010, and estimates growth at a CAGR of 5.1% between 2009 and 2014. However, IDC estimates that the Americas market for servers priced between \$100,000 and \$250,000, which we believe more closely approximates the target market for larger, more powerful servers used in virtualized data centers within the enterprise market that we target, will grow at a rate of 19.1%.

## **Our Business**

We serve enterprise-class organizations through expert technology consulting that intelligently architects, deploys and supports UC&C solutions, virtualized data center solutions and the underlying network infrastructure solutions. Our solution offerings facilitate the complete life-cycle of our customer's technology infrastructure investment in an effort to maximize their return on investment. We accomplish this by learning about our clients' unique business requirements, consulting with them around specific value propositions that can enhance their business processes and then deploying these technology solutions. In addition we are tightly aligned with our industry leading vendor partners in order to optimize our ability to represent their offerings to our clients. We manage four strategic vendor relationships:

*Cisco Systems.* We are a national provider of Cisco based solutions. We use Cisco's products in our network infrastructure solutions including wireless and network security, unified communications including video and data center solutions including their unified computing server products. Cisco is our main vendor, representing about 80% of our product sales. We employ numerous Cisco certified engineers and have been awarded numerous top partner designations from Cisco.

We are a Cisco Gold Certified Partner and we have the following Cisco Master Specialization designations:

- . Master Security
- . Master UC
- . Master Managed Services

We have the following Advanced Specialization designations from Cisco:

- . Advanced Data Center Networking Infrastructure
- . Advanced Routing and Switching
- . Advanced Unified Communications
- . Advanced Security
- . Advanced Wireless LAN

We have the following Advanced Technology Partner designations with Cisco:

- . Cisco Telepresence
- . Customer Voice Portal
- . Data Center Unified Computing
- . Unified Contact Center Enterprise
- . Video Surveillance

Our Cisco-based UC&C solutions consist of IP network-based voice and video communication solutions as well as integrated software productivity applications such as presence, instant messaging, contact center applications, portals and middleware. Our Cisco based virtual data center solutions consist of unified computing systems servers, and Nexus based data center network switching and routing. These combine with other vendor solutions to create our data center solutions architectures. Our Cisco network infrastructure solutions consist of network routing and switching, wireless networking, WAN/application optimization and acceleration and IT security.

*VMware.* We are one of VMware's National Premier Partners, their highest level of certification. Our VMware practice areas encompass key VMware competencies such as Infrastructure Virtualization (server virtualization), Business Continuity and Desktop Virtualization. VMware software is the foundation for the virtualization layer of most of our data center solutions offerings.

*NetApp.* We are a national provider of NetApp, solutions. Our Netapp based network storage solutions consist of storage systems and data management software from NetApp. We also use NetApp products to create tightly integrated and tested virtualized data center infrastructure solutions. The NetApp "Flexpod" stackable reference architecture featuring NetApp storage systems and software plus NetApp V-series storage controllers, Cisco Nexus Switches, Cisco UCS Servers and VMW v-Sphere Server Virtualization software reduces risk for our customers that are implementing a virtualized data center infrastructure.

Awards presented by our key vendor partners show the strength of our relationships with our key vendor partners as well as the level of experience and expertise that we believe gives us a competitive advantage. Recent important National- and Global-level awards include:

- VMware Global Desktop Competency Partner of the Year - February 2011
- Cisco Global Services Partner of the Year - May 2010
- Cisco US/Canada Services Partner of the Year - May 2010
- Cisco US/Canada Technology Excellence Partner of the Year - May 2010
- VMware Americas Solution Provider of the Year - February 2010
- Cisco Customer Satisfaction Excellence Award - 2010, 2009 and 2008

As the advanced technology infrastructure solutions and architectures we offered continued to increase in capability their ability to positively impact the enterprises productivity has increased. We determined that having a more systematic and consistent approach to our customer engagement methodology is critical to ensuring that our customers received the most business value while minimizing the risks in adopting these new complex technology infrastructure solutions. In 2008 we implemented a comprehensive customer engagement methodology, which we refer to as our “Strategic Delivery Framework” or “SDF”, which was initially piloted in one of our regions. We believe this framework is a competitive advantage since it ensures a very thorough and consistent process of planning, design and implementation of our solutions that is consistent across all our regions. Through detailed planning, SDF ensures that the solutions design focuses on the customers business needs while minimizing the risk of a failed solution design. The result we believe are solutions that provide better business value at lower risk.

We believe that by focusing on a few critically important technology practice areas as well as a few top vendors we can provide the best value to our customers. Network infrastructure continues to be the framework on which all technology infrastructure solutions are built. UC&C solutions have broadened to include video. This will add more capabilities and more business value to these solutions but will also increase the complexity of these solutions. In our data center practice area, customers now desire a hybrid virtualized environment. This is a data center that allows the customer to seamlessly use both internal data center resources as well as external data center resources when they are needed. They would like to be able to dynamically move virtual servers between their own internal data center and an external data center provider. This would allow them to have extra capacity in case of peak load limitations or emergencies. These new hybrid cloud data center configurations will add more capabilities to our data center solutions but will also increase their complexity.

## **Products**

We generate revenue from the sale of products. The network infrastructure and UC&C products we sell consist principally of Cisco products. The data center products we sell consist primarily of NAS and SAN products manufactured by NetApp, and EMC, and server virtualization software from VMware. Products from these four manufacturers account for more than 90% of our total product sales. We also sell various other products that are best-of-class in certain areas of the solutions that we provide. We attempt to ship products directly from our supplier to our customer and we therefore keep very little product inventory on hand.

Gross margin on product sales was 21.2%, 21.2% and 17.9% for 2010, 2009 and 2008, respectively. Product sales revenue grew 47.8% and decreased 12.4% in 2010 and 2009, respectively, and made up 87.2%, 81.1% and 82.0% of total revenue in 2010, 2009 and 2008, respectively.

## **Services**

We generate services revenue by providing services to our customers. We provide two basic categories of services, the first are professional services related to the planning, design and implementation and the second are managed services related to post-sale support services as well as managed services related to providing hosted solution offerings. Gross margin on services revenue was 21.1%, 25.7% and 29.0% for 2010, 2009 and 2008, respectively. Services revenue decreased 6.8% and 7.0% in 2010 and 2009, respectively, and made up 12.8%, 18.9% and 18.0% of total revenue in 2010, 2009 and 2008, respectively.

### ***Professional Services***

We perform professional services related to the business consulting, technology planning, design, systems engineering, implementation and support of the solutions we provide. To provide these services, we employ certified, highly trained and experienced engineering staff. We have developed not only substantial expertise in the various areas of technology that we provide, but also methodologies for designing and implementing the solutions that we provide.

Gross margin on our professional services revenue was 16.0%, 21.5% and 24.6% for 2010, 2009 and 2008, respectively. Professional services revenue decreased 9.9% and 10.2% in 2010 and 2009, respectively, and represented 10.2%, 15.6% and 15.4% of total revenue in 2010, 2009 and 2008, respectively.

### ***Managed Services***

We provide managed services, including remote monitoring, diagnostics and management of a customers' network infrastructure, data center, wireless network and security technology, as well as virtual or private cloud based hosted solutions offerings. These managed services are performed using specialized toolsets and a network support center with technical staff that are specifically trained and experienced, both generally in terms of the technology we support as well as the toolsets that we use to provide the support. Customers are notified of system issues either real time or through reporting, and we solve detected problems either remotely or onsite. Through our managed services offering we believe we are well positioned to provide service offerings that enterprise-class organizations desire and require.

Gross margin on our managed support services revenue was 41.4%, 46.1% and 55.4% for 2010, 2009 and 2008, respectively. Managed support services revenue grew 8.1% and 11.5% in 2010 and 2009, respectively, reflecting 2.6%, 3.3% and 2.6% of total revenue in 2010, 2009 and 2008, respectively.

### **Competition**

Competition for the solutions we provide is fragmented, and we compete with numerous large and small competitors. For network infrastructure solutions we compete with various small and large technology infrastructure oriented systems integrators and VARs, such as IBM Global Services, and telephone and data circuit service providers such as AT&T and Verizon. For UC&C solutions we compete with other Cisco partners that are specialized in providing UC&C. We also compete against other manufacturers and their VAR partners, including Avaya, Polycom, Shortel, and Mitel among others. For data center solutions we compete with other technology infrastructure solution providers and system integrators, and technology VARs that focus on providing data center solutions. The competitors are primarily either resellers that provide solutions using many of the same manufacturers products that we represent such as EMC, NetApp, Cisco, Dell, VMware or they also may provide solutions using other competing manufacturer's products such as Hitachi storage, IBM, HP and others. We also may compete directly against some of these manufacturers when they are involved in selling to the customer directly.

We believe that the principal competitive factor when marketing our solutions is our overall business architectural approach combined with our solution delivery methods. Other important factors include total cost, technical competence, the strength of the relationship with the customer, the quality of our support services, the perception of the customer regarding our financial and operational ability to manage a project and to provide high quality service, and the quality of our relationship with the manufacturer of the major products being supplied as a part of the solution. We compete against smaller firms based on our growing national presence and our specialization and expertise. We compete against larger firms based on our narrow focus and expertise compared to their appearance as an unfocused generalist.

### **The Geographic Markets We Currently Serve**

A majority of our customers are located in, or make significant decisions concerning their technology infrastructure in the markets in which we maintain branch offices. We believe it is important to have local management, sales and engineering staff in a metropolitan market in order to be a leading competitor in the market. Our corporate offices are located in Dallas, Texas. As of March 31, 2011 we maintained sixteen branch offices in the following markets:

- |                          |                          |                      |
|--------------------------|--------------------------|----------------------|
| •Los Angeles, California | •Oklahoma City, Oklahoma | •El Paso, Texas      |
| •Sacramento, California  | •Eugene, Oregon          | •Houston, Texas      |
| •Boise, Idaho            | •Portland, Oregon        | •San Antonio, Texas  |
| •Boston, Massachusetts   | •Austin, Texas           | •Seattle, Washington |
| •Albuquerque, New Mexico | •Dallas, Texas           | •Washington, D.C.    |
| •Raleigh, North Carolina |                          |                      |

Our Washington, DC branch office markets primarily to the Federal government.

We plan to continue expanding into new geographic markets through either acquisition or on a de novo basis. Expanding to new markets creates a two-fold opportunity for us. First, adding new geographic markets provides us with new customer opportunities in those new markets. Second, with each new market served we enhance our ability to grow and develop our brand recognition factor and increase our ability to win customer opportunities in many of our other markets because of the increased national presence provided by the additional market.

## **Customers**

Our customers include private enterprises in numerous industries including healthcare, legal, energy, utilities, hospitality, transportation, manufacturing, finance and entertainment, as well as Federal, state and local governmental agencies and private and public educational organizations. We currently focus on mid-tier enterprise organizations with 200 to 50,000 users of telephone and/or networked computer technology. As we continue to expand to new geographic markets we will pursue even larger customers. A majority of our customers are located in, or make significant decisions concerning their network infrastructure, voice and video communications, and data center technology infrastructure, in the markets in which we maintain branch offices. In addition to our direct sales model to enterprise customers, we also provide technical consulting and project management services as a sub-contractor for other systems integrators as well as manufacturers that are involved directly with a customer. Based on billing activity during 2010 we conducted business with approximately 1,747 customers of which 68% were customers that had conducted business with us during the previous two years. No single customer represented 10% or more of our revenue for the years ended December 31, 2010, 2009 and 2008.

## **Sales and Marketing**

We market our products and services primarily through our sales organization comprised of account managers, presales architects and customer service representatives. These sales personnel are compensated in part based on productivity, specifically the profitability of sales that they participate in developing. We also promote our services through general and trade advertising, and participation in trade shows. Our sales organization works closely with our vendor partners sales organizations to identify opportunities.

## **Supply and Distribution**

We purchase products for the technology solutions we provide to our customers. The majority of our product purchases are made directly from our four strategic vendors. We also purchase products through various distribution channels either based on the manufacturers' decision regarding distribution or when a product is not available directly from a manufacturer. We attempt to keep minimal inventory on hand and attempt to purchase inventory only as needed to fulfill orders. The substantial majority of the product that we purchase is shipped directly from our suppliers to our customers in order to shorten the business cycle and avoid handling the product in our facilities.

## **Employees**

At April 30, 2011, we employed approximately 470 people. Of these, approximately 150 were employed in sales, marketing and customer service, 185 were employed in engineering and technical positions and 135 were employed in administration, finance and management information systems. We believe our ability to recruit and retain highly skilled and experienced technical, sales and management personnel has been, and will continue to be, critical to our ability to execute our business plans. None of our employees are represented by a labor union nor are any subject to a collective bargaining agreement. We believe our relations with our employees are good.

## **NASDAQ Delisting Determination**

On April 12, 2011, the NASDAQ Listings Qualification Panel (the "Panel") of The NASDAQ Stock Market ("NASDAQ") notified us that it had determined to delist our common shares from the NASDAQ Global Select Market and to suspend trading in our common shares effective at the open of market on April 14, 2011. The Panel's determination was made in connection with our non-compliance with the filing requirements set forth in Listing Rule 5250(c)(1) due to not having filed certain of our periodic reports. The Panel's decision represents the final decision of NASDAQ. In accordance with Listing Rule 5830 and Rule 12d2-2 under the Securities Exchange Act of 1934, NASDAQ filed an application on Form 25 with the SEC to delist our securities from NASDAQ.

Our common shares are currently quoted on the OTC Markets Group Inc. and trade under the symbol "INXI". We have already filed a listing application to facilitate a resumption of trading on NASDAQ as soon as possible. In that regard, we believe that upon making the necessary filings with the SEC we will satisfy all applicable requirements for listing on the NASDAQ. We anticipate that NASDAQ will be able to complete the review of the listing application on an expedited basis but, there can be no assurance of when or if our common shares will be re-listed. See "Item 1A. Risk Factors".

## **General Information**

Our corporate headquarters is located at 1955 Lakeway Drive, Lewisville, Texas 75057 (Dallas) and our telephone number is (469-549-3800). Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports are available without charge from us on our website at <http://www.INXI.com>, as soon as reasonably practicable following the time they are filed with or furnished to the SEC. Reports filed with the SEC may also be viewed at [www.sec.gov](http://www.sec.gov) or obtained at the SEC Public Reference Room in Washington, D.C. Information regarding the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330.

**Item 1A. Risk Factors.**

There are many risk factors that affect our business and results of operations, some of which are beyond our control. You should carefully consider the risks below before making an investment decision. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.

**Global market and economic conditions may adversely affect our business and results of operations.**

Current economic conditions remain uncertain. Challenging economic times make it extremely difficult for our customers and us to accurately forecast and plan future business activities, and they could cause our customers to slow spending on our products and services, which could delay and lengthen sales cycles. Continued concerns about the possible systemic impact of inflation or deflation, volatility in energy costs, geopolitical issues, and added concerns fueled by the Federal government deficits and interventions in the U.S. financial and credit markets have contributed to instability and diminished long-term expectations for the U.S. and global economy. If the conditions in the general economy and the markets in which we operate worsen from present levels, our business, financial condition and results of operations could be materially and adversely affected.

We have a number of customers that are Federal, state and local governmental agencies and private and public educational organizations. These agencies and organizations are experiencing revenue shortfalls and spending cutbacks that may cause significant reductions in their capital expenditures in general or by specifically reducing their spending on information technology.

**A significant portion of our customers are based in Texas.**

Until mid-2005 we were primarily a Texas-based organization and the majority of our customers were in Texas. While we are less dependent upon Texas customers now than we were a few years ago, a significant portion of our customers are still based in Texas. Therefore, our revenue and hence our profitability would be materially affected by a downturn in economic conditions in Texas, in addition to any general economic downturn in the United States. If demand for the products and services we provide to customers in Texas decreases, our business, financial condition and results of operations could be significantly harmed.

**We have a history of losses and may continue to incur losses.**

During 2009 we incurred a net loss from continuing operations of \$4,295, including a \$2,380 non-cash charge for impairment of goodwill. During 2008, we incurred a net loss from continuing operations of \$12,785, including a total non-cash charge of \$13,071 noncash charge for goodwill, intangible asset, and property and equipment impairments. Although profitable in 2010, we cannot assure you that we remain profitable in upcoming quarters or years. In order to maintain profitability, we will have to maintain or increase our operating margin, and we cannot provide any assurance that we will be able to do so. If we are unable to increase revenue, if our gross margins decrease, or if we are unable to control our operating expenses, our business could produce losses. Whether we are able to remain profitable in the future will depend on many factors, but primarily upon the commercial acceptance of the technologies and product lines that we promote the use of, including products developed and marketed by Cisco.

**Our goodwill and intangible assets may become impaired.**

As of December 31, 2010, we had \$13,532 of goodwill and \$1,015 of intangible assets after recognizing impairment charges of \$2,560, \$2,380, and \$13,071 in 2010, 2009 and 2008, respectively. Goodwill and intangible assets represent approximately 13% of our total assets as of December 31, 2010. Generally accepted accounting principles in the United States of America require that we review the value of goodwill on at least an annual basis or when indicators of impairment arise to determine whether the recorded value has been impaired and should be reduced. In the event that our goodwill or long-lived assets are further impaired in the future, any impairment charge could have a material impact on our financial position and results of operations, and could harm the trading price of our common stock.

**Our success depends on maintaining our relationship with Cisco and other key vendors.**

The majority of our revenue for the years ended December 31, 2010, 2009 and 2008 was derived from or dependent upon the sale of Cisco products and related services. We anticipate that these products and related services will continue to account for a substantial portion of our revenue for the foreseeable future. We have a contract with Cisco to purchase the products that we resell, and we purchase substantially all of our Cisco products directly from Cisco. Cisco can terminate this agreement on relatively short notice. Cisco has designated us an authorized reseller and we receive certain benefits from this designation, including special pricing and payment terms. We have in the past, and may in the future, purchase Cisco-centric products from other sources. When we purchase Cisco-centric products from sources other than Cisco, the prices are typically higher and the payment terms are not as favorable. Accordingly, if we are unable to purchase directly from Cisco and maintain our status as an authorized reseller of Cisco network products, our business could be significantly harmed. In addition, we are also dependent upon maintaining our relationship with a number of other key vendors, including NetApp and VMware. If we are unable to purchase products from any of our key vendors, including Cisco, NetApp and VMware, or from other sources on terms that are comparable to the terms we currently receive, our business would be harmed and our operating results and financial condition would be materially and adversely affected.

**Our success depends on a broad market acceptance of Cisco-centric IP telephony and network infrastructure products.**

In the area of IP telephony solutions we offer only Cisco-centric solutions. Cisco is our main vendor and represents about 80% of our product sales. We believe that Cisco is a substantial player in the IP telephony marketplace and will continue to offer competitive, state-of-the-art technology. However, we cannot assure you that the Cisco-centric IP telephony products we offer will continue to obtain broad market acceptance. Competition, technological advances and other factors could reduce demand for, or market acceptance of, the Cisco-centric IP telephony products and services we offer. In addition, new products, applications or services may be developed that are better adapted to changing technology or customer demands and thus could render our Cisco-centric products and services unmarketable or obsolete. To compete successfully, the Cisco-centric IP telephony products we offer must achieve broad market acceptance and we must continually enhance our related software and customer services in a timely and cost-effective manner. If the Cisco-centric IP telephony products we offer fail to achieve broad market acceptance, or if we do not adapt our existing services to customer demands or evolving industry standards, our business, financial condition and results of operation could be significantly harmed.

**Our profitability depends on Cisco product pricing and incentive programs.**

Our annual and quarterly gross profits and gross margins on product sales are materially affected by Cisco product pricing and incentive programs. These incentive programs currently enable us to qualify for cash rebates or product pricing discounts and are generally earned based on sales volumes of particular Cisco products and customer satisfaction levels. We recognized vendor incentives as a reduction of cost of sales amounting to \$18,169, \$13,345, and \$10,118 representing 5.8%, 5.9%, and 3.9% of total revenues in 2010, 2009 and 2008, respectively. From time to time Cisco changes the criteria upon which qualification for these incentives is based, and there is no assurance that we will continue to meet the program qualifications. Cisco is under no obligation to continue these incentive programs. In addition, we expect our future profitability to be impacted not only by pricing and incentive programs of Cisco, but also by the pricing and incentive programs of NetApp, VMware and other key vendors.

**Our success depends on broad market acceptance of virtualization technology, and in particular the virtualization technology of VMware.**

The market for virtualization software is characterized by rapid technological change, evolving industry standards and strong customer demand for new products, applications and services. As is typical of a new and rapidly evolving industry, the demand for, and market acceptance of virtualization technology is highly uncertain. We cannot assure you that the use of virtualization technology will be widespread.

**Our business depends on the level of capital spending by enterprises for the technology infrastructure products and services we offer.**

As a supplier of technology infrastructure solutions, our business depends on the level of capital spending for such solutions by enterprise organizations in our markets. We believe that an enterprise's investment in technology infrastructure and related services depends largely on general economic conditions that can vary significantly as a result of changing conditions in the economy as a whole. The market for the solutions we provide may continue to grow at a modest rate or not at all, or may decrease. If our customers decrease their level of spending, our revenue and operating results would likely be adversely affected. To the extent that customers continue to delay moving forward with projects because of actual or perceived economic uncertainty and reduced credit availability, our revenue and profitability will be negatively impacted.

**Our strategy contemplates geographic expansion, which we may be unable to achieve and which is subject to numerous uncertainties.**

A component of our strategy is to become one of the leading national providers of the technology infrastructure solutions we provide. To achieve this objective, we must either acquire existing businesses or hire qualified staff in other locations throughout the country and open new offices. Identifying and acquiring existing businesses is a time-consuming process and is subject to numerous risks. Qualified personnel are in demand, and we expect the demand to increase as the market for the technology infrastructure solutions that we provide grows. We will also likely face competition from our competitors and from local and regional competitors in the markets we attempt to enter. A rapid expansion in the size and geographical scope of our business is likely to introduce management challenges that may be difficult to overcome. We cannot assure you that we will be successful in expanding our operations or achieving our goal of becoming a national provider of technology infrastructure solutions. An unsuccessful expansion effort would consume capital and human resources without achieving the desired benefit and would have an adverse effect on our business, financial condition and results of operations.

**We may require financing to achieve expansion of our business operations, and failure to obtain financing may prevent us from carrying out our expansion plans.**

We may need additional capital to grow our business. Our business plan calls for the expansion of sales of our technology infrastructure solutions to enterprises in geographical markets where we currently do not operate, including expansion through acquisitions. If we do not have adequate capital or are not able to raise the capital to fund our business objectives, we may have to delay the implementation of our business plan. We can provide no assurance that we will be able to obtain financing if required, or, if financing is available, there is no assurance that the terms would be favorable to existing stockholders. Our ability to obtain financing is subject to a number of factors, including general market conditions, investor acceptance of our business plan, our operating performance and financial condition, and investor sentiment. These factors may affect the timing, amount, terms or conditions of additional financing available to us.

**We require access to significant working capital and vendor credit to fund our day-to-day operations. Our failure to comply with the financial and other covenants under our working capital facility could lead to a termination of the agreement and an acceleration of our outstanding debt.**

We require access to significant working capital and vendor credit to fund our day-to-day operations. Our credit facility with Castle Pines contains a number of financial and other covenants. We have had to obtain several covenant waivers over the past year related to our failure to timely file reports under the Securities Exchange Act of 1934. A breach of these financial or other covenants, unless waived, would be a default under the credit facility. Upon an event of default, Castle Pines may terminate the credit facility and/or declare all amounts outstanding under the credit facility immediately due and payable. The acceleration of our debt could have a material adverse effect on our financial condition and liquidity. Additionally, the amount of working capital available to us under the credit facility is dependent upon the amount and quality of our accounts receivable. A significant default or payment delays of our accounts receivable could materially adversely affect our borrowing base and our access to sufficient working capital, which would have an adverse effect on our business, financial condition and results of operations. In addition, there is a risk that Castle Pines Capital may be unable to continue the financing relationship with us due to unforeseen future credit market problems or changes in their credit granting criteria.

**We may be unable to manage our growth effectively, which may harm our business.**

The ability to operate our business in a rapidly evolving market requires effective planning and management. Our efforts to grow including by acquisition, have placed, and are expected to continue to place, a significant strain on our personnel, management systems, infrastructure and other resources. We have had mixed results regarding our ability to efficiently and cost effectively manage our growth and demonstrate leverage in our business model. Our ability to manage future growth effectively will require us to improve our business and financial processes. If we are unable to adequately manage our growth our operations could be adversely affected and our growth could be impaired.

**Our operating results have historically been volatile, and may continue to be volatile, particularly from quarter to quarter.**

We sell products and services that may be bundled together as one or more solutions. Revenue recognition requirements for our offerings are complex and may require deferral of revenue recognition until all of our delivery commitments have been completed. During quarterly periods in which we realize lower levels of revenue, our profitability may be negatively impacted. Our quarterly operating results have historically depended on, and may fluctuate in the future as a result of, many factors including:

- Volume and timing of orders received during the quarter;
- Timing of revenue recognition due to contract terms;
- Gross margin fluctuations associated with the mix of products sold;
- Patterns of capital spending by enterprises;
- The timing of new product announcements and releases;
- The cost and effect of acquisitions;
- The amount and timing of sales incentives from our key vendors we may receive in any particular quarter, particularly Cisco, which can vary substantially;
- The availability and cost of products and components from our suppliers; and
- Credit availability.

As a result of these and other factors, we have historically experienced, and may continue to experience, fluctuations in sales and operating results.

**We have many competitors and expect new competitors to enter our market, which could increase price competition and may affect the amount of business available to us and the prices that we can charge for our products and services.**

The markets for all of the products and services we offer are extremely competitive and subject to rapid change. Growth in demand for many of the technology infrastructure products we provide has been predicted by various industry analysts, and we therefore expect competition to increase as existing competitors enhance and expand their products and services and as new participants enter the market. A rapid increase in competition could negatively affect the amount of business that we obtain and the prices that we are able to charge.

Additionally, many of our competitors and potential competitors have substantially greater financial resources, customer support, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition and more established relationships than we do. We cannot be sure that we will have the resources or expertise to compete successfully. Compared to us, our competitors may be able to:

- Develop and expand their products and services more quickly;
- Adapt faster to new or emerging technologies and changing customer needs;
- Take advantage of acquisitions and other opportunities more readily;
- Negotiate more favorable agreements with vendors;
- Devote greater resources to marketing and selling their products; and
- Address customer service issues more effectively.

Some of our competitors may also be able to increase their market share by providing customers with additional benefits or by reducing their prices. We cannot be sure that we will be able to match price reductions by our competitors. In addition, our competitors may form strategic relationships with each other to better compete with us. These relationships may take the form of strategic investments, joint-marketing agreements, licenses or other contractual arrangements that could increase our competitors' ability to serve customers. A material and/or rapid increase in competition would likely have an adverse affect on our business, financial condition and results of operations.

**Business acquisitions, dispositions or joint ventures entail numerous risks and may disrupt our business, dilute stockholder value or distract management attention.**

As part of our business strategy, we have completed acquisitions and plan to continue to consider acquisitions of, or significant investments in, businesses that offer products, services and technologies complementary to ours. Any acquisition could materially adversely affect our operating results and/or the price of our securities. Acquisitions involve numerous risks, some of which we have experienced and may continue to experience, including:

- Unanticipated costs and liabilities
- Difficulty of integrating the operations, products and personnel of the acquired business;
- Difficulty retaining key personnel of the acquired business;
- Difficulty retaining customers of the acquired businesses;
- Difficulties in managing the financial and strategic position of acquired or developed products, services and technologies;
- Difficulties in maintaining customer relationships, in particular where a substantial portion of the target's sales were derived from products that compete with products that we currently offer;
- The diversion of management's attention from the core business;
- Inability to maintain uniform standards, controls, policies and procedures; and
- Damage to relationships with acquired employees and customers as a result of integration of the acquired business.

To the extent that shares of our common stock or rights to purchase common stock are issued in connection with any future acquisitions, dilution to our existing stockholders will result and our earnings per share may suffer. Any future acquisitions may not generate the anticipated level of revenue and earnings or provide any benefit to our business, and we may not achieve a satisfactory return on our investment in any acquired businesses.

**We may not be able to hire and retain highly skilled technical employees, which could affect our ability to compete effectively and could adversely affect our operating results.**

We depend on highly skilled technical personnel to provide the services we sell to our customers. To succeed, we must hire and retain employees who are highly skilled in rapidly changing communications and data center technologies. In particular, as we implement our strategy of focusing on technology infrastructure solutions, we will need to:

- Hire more employees with experience providing technology infrastructure solutions; and
- Retrain our current personnel to sell and support the technology infrastructure solutions we currently sell and that we intend to market in the future.

Individuals who can perform the services we need to provide our products and services are scarce. Because the competition for qualified employees in our industry is intense, hiring and retaining qualified employees is both time-consuming and expensive. We may not be able to hire enough qualified personnel to meet our needs as our business grows or to retain the employees we currently have. Our inability to hire and retain the individuals we need could hinder our ability to sell our existing products, systems, software or services or to develop and sell new ones. If we are not able to attract and retain qualified employees, we will not be able to successfully implement our business plan and our business will be harmed.

**We rely extensively on computer systems to process transactions, summarize results and manage our business. Disruptions in both our primary and secondary (back-up) systems could harm our ability to operate our business.**

Although we have independent, redundant, and primary and secondary computer systems, given the number of individual transactions we have each year, it is critical that we maintain uninterrupted operation of our business-critical computer systems. Our computer systems, including our back-up systems, are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, internal or external security breaches, catastrophic events such as fires, earthquakes, tornadoes and hurricanes, and/or errors by our employees. If our computer systems and our back-up systems are damaged or cease to function properly, we may have to make significant investment to fix or replace them, and we may suffer interruptions in our operations in the interim. Any material interruption in both of our computer systems and back-up systems may have a material adverse effect on our business or results of operations.

**Almost 20% of our stock is controlled by our executive chairman, who has the ability to substantially influence the election of directors and other matters submitted to stockholders.**

James H. Long beneficially owns 1,896,356 shares of our common stock, which represent approximately 17.1% of our shares outstanding and beneficially owned shares as of May 16, 2011. As a result, he has and is expected to continue to have the ability to significantly influence the nomination and the election of our board of directors and the outcome of all other issues submitted to our stockholders. The interests of this principal stockholder may not always coincide with our interests or the interests of other stockholders, and he may act in a manner that advances his best interests and not those of other stockholders. One consequence to this substantial influence or control is that it may be difficult for investors to add or remove management of the company and to stop the addition or removal of management of the Company. It could also deter unsolicited takeovers, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices.

**Nasdaq has recently delisted our common shares from quotation on its exchange.**

The Nasdaq Stock Market (the "NASDAQ") has recently delisted our common shares from quotation on its exchange for failure to continue to meet its continued listing requirements. The delisting of our common shares from NASDAQ could have material adverse effects by, among other things:

- reducing the liquidity and market price of our common shares;
- reducing the number of investors willing to hold or acquire our common shares, thereby further restricting our ability to obtain equity financing;
- reducing the amount of news and analyst coverage of the Company; and
- reducing our ability to retain, attract and motivate our directors, officers and employees.

**Our stock price may be subject to substantial volatility, and the value of your investment may decline.**

Our common stock is traded on OTC Bulletin Board, and trading volume may be limited or sporadic. The market price of our common stock has experienced, and may continue to experience, substantial volatility. During 2010, our common stock traded between \$4.25 and \$6.78 per share, on volume ranging from approximately 0 to 262,600 shares per day. As a result of the relatively low and inconsistent volume of trading and the trading price volatility, the current price for our common stock is not necessarily a reliable indicator of our fair market value. The price at which our common stock will trade may fluctuate as a result of a number of factors, including the number of shares available for sale in the market, quarterly variations in our operating results, new products or services by us or competitors, regulatory investigations or determinations, acquisitions or strategic alliances by us or our competitors, recruitment or departures of key personnel, the gain or loss of significant customers, changes in the estimates of our operating performance, actual or threatened litigation, market conditions in our industry and the economy as a whole. Volatility in the price of our common stock may depress the trading price of the common stock our common stock. The risk of volatility and depressed prices of our common stock also applies to warrant holders who receive shares of common stock upon conversion.

Numerous factors, including many over which we have no control, may have a significant impact on the market price of our common stock, including:

- Announcements of new products or services by us or our competitors;
- Current events affecting the political, economic and social situation in the United States and other countries where we operate;
- Trends in our industry and the markets in which we operate;
- Changes in financial estimates and recommendations by securities analysts;
- Acquisitions and financings by us or our competitors;
- The gain or loss of a significant customer;
- Quarterly variations in operating results;
- The operating and stock price performance of other companies that investors may consider to be comparable; and
- Purchases or sales of blocks of our securities.

Furthermore, stockholders may initiate securities class action lawsuits if the market price of our stock drops significantly, which may cause us to incur substantial costs and could divert the time and attention of our management.

**Limitations and constraints associated with buying and selling our stock.**

The trading of our Common Stock on the OTC Bulletin Board rather than on NASDAQ may reduce the price of our Common Stock and the levels of liquidity available to our stockholders. Furthermore, because of the limited market and generally low volume of trading in our Common Stock, our Common Stock is more likely to be affected by broad market fluctuations, general market conditions, fluctuations in our operating results, changes in the market's perception of our business, and announcements made by us, our competitors or parties with whom we have business relationships. Additionally, because of state securities or "blue sky" laws, we cannot avail our self of federal preemption (which adds substantial compliance costs to securities issuances, including pursuant to employee option plans, stock purchase plans and private or public offerings of securities), and purchasers of shares of our Common Stock may find it difficult to resell their shares at prices quoted in the market or at all. Our ability to issue additional securities for financing or other purposes, or to otherwise arrange for any financing we may need in the future, may also be materially and adversely affected by the fact that our securities will not be traded on NASDAQ. The fact that our Common Stock will not be traded on NASDAQ could also have other adverse effects on us in addition to the foregoing, including, without limitation, the loss of confidence in us by current and prospective suppliers, customers, employees and others with whom we have or may seek to initiate business relationships.

**Future issuances of common stock and hedging activities may depress the trading price of our common stock.**

Any future issuance of equity securities, including the issuance of shares upon exercise of outstanding warrants, could dilute the interests of our existing stockholders, and could substantially decrease the trading price of our common stock. As of April 30, 2011, we had outstanding approximately 1.2 million options and warrants to acquire our common stock at prices between \$0.82 and \$12.63 per share. We may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy, in connection with acquisitions, to adjust our ratio of debt to equity, to satisfy our obligations upon the exercise of outstanding warrants or options or for other reasons. The market price of our common stock could decline significantly if we or our existing stockholders sell a large number of shares, if we issue a large number of shares of stock in connection with future financing activities, acquisitions or otherwise, or due to the perception that such sales could occur. These factors also could make it more difficult to raise funds through future offerings of common stock.

**Provisions in our certificate of incorporation, bylaws, charter documents and Delaware law could discourage a change in control, or an acquisition of us by a third party, even if the acquisition would be favorable to you, thereby and adversely affect existing stockholders**

Our certificate of incorporation and the Delaware General Corporation Law contain provisions that may have the effect of making more difficult or delaying attempts by others to obtain control of our company, even when these attempts may be in the best interests of stockholders. For example, our certificate of incorporation also authorizes our board of directors, without stockholder approval, to issue one or more series of preferred stock, which could have voting and conversion rights that adversely affect or dilute the voting power of the holders of common stock. Delaware law also imposes conditions on certain business combination transactions with "interested stockholders."

These provisions and others that could be adopted in the future could deter unsolicited takeovers or delay or prevent changes in our control or management, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices. These provisions may also limit the ability of stockholders to approve transactions that they may deem to be in their best interests.

**Item 1B. Not applicable.**

## Item 2. Properties.

We conduct operations at the following leased sites:

- |                          |                          |                      |
|--------------------------|--------------------------|----------------------|
| •Los Angeles, California | •Oklahoma City, Oklahoma | •El Paso, Texas      |
| •Sacramento, California  | •Eugene, Oregon          | •Houston, Texas      |
| •Boise, Idaho            | •Portland, Oregon        | •San Antonio, Texas  |
| •Boston, Massachusetts   | •Austin, Texas           | •Seattle, Washington |
| •Albuquerque, New Mexico | •Dallas, Texas           | •Washington, D.C.    |
| •Raleigh, North Carolina |                          |                      |

We lease 34,656 square feet in Lewisville, Texas (Dallas) for our corporate offices and Dallas regional office and 19,830 square feet in Houston, Texas for our accounting offices and Houston regional office. The Dallas corporate offices and regional office lease expires in 2015 and is renewable for one additional five year term. The remainder of the locations range in size from approximately 1,000 to 10,000 square feet and lease terms range from one to five years. Some office leases contain scheduled base rent increases over the term of the lease and may include periodic rent adjustments for real estate taxes, insurance and other operation expenses applicable to the property. We believe our existing leased properties are in good condition and suitable for the conduct of our business.

## Item 3. Legal Proceedings

On February 6, 2009, we filed a lawsuit in the United States District Court Eastern District of Texas styled *InternetworkExperts, Inc. v. International Business Machines Corporation* (“IBM”) claiming damages totaling \$1,791 plus interest, attorney fees, and costs of suit for breach of purchase orders in 2004 and 2006 under which payments were due upon early termination of services. On January 29, 2010, a settlement agreement was executed covering all outstanding litigation between the parties, resulting in IBM paying INX the amount of \$310 less legal fees of \$112.

On August 3, 2009, we filed a lawsuit in the 152nd District Court of Harris County styled *INX, Inc. v. General Consulate of Equatorial Guinea* seeking damages plus interest, attorney fees, and costs of suit for breach of contract in connection with the lease of our then Houston, Texas location. On August 13, 2010, we received payment of \$140 in settlement of the litigation.

On July 15, 2010, we filed a lawsuit in the United States District Court for the District of New Mexico (“US District Court”) styled *INX, Inc. v. Azulstar, Inc.* (“Azulstar”) seeking compensatory and punitive damages plus interest, attorneys’ fees, and costs of suit for breach of contract, tortious interference with business relations and existing contractual relations, and other claims. Azulstar provided professional services as a subcontractor to us in connection with the State of New Mexico, Department of Transportation RailRunner Wireless System Project (“RailRunner Project”). Azulstar hired subcontractors to assist it and is alleged by us not to have paid at least one subcontractor for work performed. In addition to paying Azulstar directly for all work performed except \$23 withheld, we paid an Azulstar subcontractor \$146 directly. The duplicate costs were charged to professional services cost of sales in the quarter ended December 31, 2009. On September 10, 2010, Azulstar filed a motion to dismiss our claim for failure to join a party under Rule 19 of the Federal Rules of Civil Procedure (“Motion to Dismiss”). The US District Court has not yet ruled on the motion. The amount of damages and costs that may ultimately be recovered by us, if any, cannot be determined at this time. The Motion to Dismiss includes statements that Azulstar intends to file breach of contract claims against us. The nature and extent of Azulstar’s allegations cannot be determined and the final outcome of any lawsuit that may be filed by Azulstar on this matter cannot be predicted, including whether such threatened lawsuit could have a material adverse effect on our results of operations or financial position.

We are also party to other litigation and claims which management believes are normal in the course of its operations. While the results of such litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a materially adverse effect on our results of operations, financial position, or cash flows.

## Item 4. (Removed and reserved)

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

#### NASDAQ Listing Requirements

As described earlier in this Annual Report on Form 10-K, NASDAQ suspended trading in our common shares effective at the open of market on April 14, 2011 due to our non-compliance with the filing requirements set forth in Listing Rule 5250(c)(1) due to the delayed filing of certain of our periodic reports. In accordance with Listing Rule 5830 and Rule 12d2-2 under the Securities Exchange Act of 1934, NASDAQ filed an application on Form 25 with the SEC to delist our securities from NASDAQ. Our common shares, par value \$0.01, are currently quoted on the OTC Markets Group Inc. under the trading symbol "INXI".

#### Market Information

Our common stock is included in the OTC Bulletin Board under the symbol "INXI". From September 21, 2007 to April 13, 2011, our common stock traded on the NASDAQ Global Market. Trading of our warrants on the NASDAQ Global Market ceased on May 7, 2009. From April 24, 2006 to September 20, 2007, our common stock and warrants traded on the NASDAQ Capital Market.

#### Common Stock

The following table sets forth the per share price range of our common stock.

	High	Low
<b>2009</b>		
First Quarter	\$ 5.25	\$ 2.19
Second Quarter	5.65	2.36
Third Quarter	6.85	4.62
Fourth Quarter	7.03	5.37
<b>2010</b>		
First Quarter	\$ 5.75	\$ 4.54
Second Quarter	5.20	4.55
Third Quarter	5.20	4.25
Fourth Quarter	6.78	5.15

#### Warrants

The following table sets forth the per share price range of our warrants.

	High	Low
<b>2009</b>		
First Quarter	\$ 0.25	\$ 0.02
Second Quarter	0.19	0.01
Third Quarter	—	—
Fourth Quarter	—	—
<b>2010</b>		
First Quarter	\$ —	\$ —
Second Quarter	—	—
Third Quarter	—	—
Fourth Quarter	—	—

As of May 16, 2011, there were 147 stockholders of record of our common stock. On May 16, 2011, the closing sales price of our common stock as reported by the OTC Bulletin Board was \$5.50 per share.

#### Dividend Policy

We have not declared or paid any cash dividends and do not anticipate declaring dividends on our common stock in the foreseeable future. Our current intention is to retain earnings, if any, to support the future growth of our business.

## Equity Compensation Plan Information

The following table sets forth:

- the number of shares of our common stock issuable upon exercise of outstanding options, warrants and rights, separately identified by those granted under equity incentive plans approved by our shareholders and those granted under plans, including individual compensation contracts, not approved by our shareholders (column A),
- the weighted average exercise price of such options, warrants and rights, also as separately identified (column B), and the number of shares remaining available for future issuance under such plans, other than those shares issuable upon exercise of outstanding options, warrants and rights (column C).

	<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
	Number of Shares to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Shares Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Shares Reflected in Column A)
<u>As of December 31, 2009:</u>			
Equity incentive plans approved by shareholders	1,833,753	\$5.11	193,923
Equity incentive plans not approved by shareholders	—	—	—
<b>Totals</b>	<b>1,833,753</b>	<b>\$5.11</b>	<b>193,923</b>
<u>As of December 31, 2010:</u>			
Equity incentive plans approved by shareholders	1,530,655	\$4.61	225,848
Equity incentive plans not approved by shareholders	140,000	—	—
<b>Totals</b>	<b>1,670,655</b>	<b>\$4.61</b>	<b>225,848</b>

Equity incentive plans are further discussed in Note 8 to consolidated financial statements in Part II, Item 8.

## Unregistered Sales of Equity Securities and Use of Proceeds

In December 2008, we issued 6,000 shares of unregistered common stock to an investor relations firm under a services agreement. The issued shares were valued at \$26 as determined by multiplying the shares issued by the closing price per share on December 31, 2008.

On January 5, 2010, we entered into a service agreement with an investor relations firm and per the terms of the agreement issued to them 5,000 unregistered shares valued at \$28 on February 1, 2010 and an additional 5,000 unregistered shares valued at \$25 on July 1, 2010. The issued shares were valued by multiplying the shares issued by the closing price per share on each respective date.

## Item 6. Not Applicable

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

We begin Management's Discussion and Analysis of Financial Condition and Results of Operations with a discussion of the Financial Restatement as provided in this Form 10-K and the Form 10-Qs being filed contemporaneously for the 2010 quarterly periods and containing the 2009 quarterly restatements. We then present a business and financial overview including discussion of recent business combinations, followed by a discussion of our annual results of operations. This is followed by an analysis of our liquidity and capital resources, a discussion of our critical accounting policies, and a discussion on recent accounting pronouncements. Lastly, we provide the restated year to date operating results for the first three quarters of 2008 and then a discussion of our results of operations for the 2009 year to date quarterly periods as compared to our results in the corresponding 2008 periods, both as restated. In addition, we have provided the eight quarterly balance sheets for the 2008 and 2009 periods.

The following discussion of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the notes to those statements included elsewhere in this report. The following discussion and analysis contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under “Item 1A. Risk Factors” and elsewhere in this report.

## Financial Restatement

In this Annual Report on Form 10-K, the Company:

1. Restates its Consolidated Balance Sheet as of December 31, 2008, and the related Consolidated Statements of Operations, Stockholders’ Equity and Cash Flows for the year ended December 31, 2008, and the related disclosures in Notes to Consolidated Financial Statements;
2. Restates its Unaudited Quarterly Financial Data for the first three quarters in the year ended December 31, 2008; and
3. Amends its Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) as it relates to the year to date quarterly information previously provided in Form 10-Q for each quarter in the year ended December 31, 2009;

Contemporaneously with the filing of this Annual Report, the Company is also restating the Condensed Consolidated Financial Statements for the quarters ended March 31, 2009, June 30, 2009 and September 30, 2009 as presented in the Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010.

As previously disclosed in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on March 26, 2010, the Company announced that it was delaying its fourth quarter earnings release (for the year ended December 31, 2009) and that it would not file its Annual Report on Form 10-K for the fiscal year 2009 by its due date in order to allow the Company additional time for the reexamination of its revenue recognition under Accounting Standards Codification (ASC) 605-25, Revenue Recognition, Multiple-Element Arrangement, previously referred to as Emerging Issues Task Force No. 00-21 (“EITF 00-21”), “Revenue Arrangements with Multiple Deliverables”.

In the Company’s Current Report on Form 8-K filed with the SEC on June 21, 2010, the Company announced that the Audit Committee of its Board of Directors, upon the recommendation of management, had determined that its previously issued financial statements included in its Annual Report on Form 10-K/A for the fiscal year ended December 31, 2008, its Quarterly Report for the quarter ended March 31, 2009 on Form 10-Q/A and for the quarters ended June 30, 2009 and September 30, 2009 on Form 10-Q, should no longer be relied upon as a result of certain errors affecting the timing of recognition of revenues and costs of revenues.

The restated financial statements correct the following errors in the recognition of revenue associated with the proper:

1. Application of EITF 00-21, affecting the timing and presentation of revenue recognized (“00-21 Adjustments”) for the:
  - a. Proper determination of contracts to which EITF 00-21 was applicable and the related units of accounting for such contracts,
  - b. Proper determination of linkage between contracts, reflecting aggregation of single contracts into multiple element arrangements since they were negotiated as a package, and
  - c. Proper assessment of whether or not we had vendor specific objective evidence (“VSOE”) of the fair value of the various deliverables within arrangements containing multiple deliverables, as well as (i) the timing of revenue recognition based upon the relative fair value of the deliverables within the arrangement for deliverables for which we are able to establish the fair value. (ii) the allocation of the total arrangement consideration between the various elements of the arrangement based upon the relative fair value of the deliverables within the arrangement for multi-element arrangements, and, (iii) the deferral of revenue for the entire arrangement in situations where the arrangement contained remaining undelivered deliverables for which we are not able to establish the fair value.
2. Identification of customer contracts with special customer acceptance terms which require deferral of revenues and related costs of revenues and commissions until customer acceptance was obtained (“Special Acceptance Terms”),
3. Identification of contract shipping terms resulting in the incorrect timing of recognition of revenues and related costs of sales and commissions (“Shipping Terms”), and
4. Identification of products that are maintenance, support, and installation services provided by third parties as the primary obligor of the service, which requires presentation of the revenue reported by the Company net of the cost of the services provided by the third party (“Net Presentation”).

In addition, the Company also determined that an error was made in the accounting for contingent consideration (“earn-out”) paid in August 2006 in connection with the acquisition of substantially all of the assets of InfoGroup Northwest, Inc. (“InfoGroup”). The InfoGroup assets were acquired under an asset purchase agreement in June 2005 and most InfoGroup employees became employees of the Company. As part of the earn-out provision, cash and common stock were paid by the Company to the InfoGroup shareholder based upon the InfoGroup branch offices achieving specific financial performance targets, which were recorded as goodwill. The selling shareholder decided to give a portion of the earn-out to former employees of InfoGroup who had become employees of the Company as a result of the acquisition (“Employee Payments”). Under GAAP, including guidance promulgated by the SEC, actions of economic interest holders in a company may be imputed to the company itself. When a selling shareholder gives acquisition-related payments to Company employees who were not selling shareholders, these payments are viewed as resulting from services that are assumed to have benefited the Company and therefore must be further recorded as a non-cash charge to compensation expense. In effect, the Employee Payments are in substance a separate transaction from the Company’s acquisition of the InfoGroup assets, which should have been recorded as a separate non-cash charge to compensation expense. The Employee Payments were therefore required to be reflected in the consolidated financial statements for the year ended December 31, 2006 as non-cash compensation expense in the amount of \$672, and the selling shareholder was deemed to have made a corresponding capital contribution to the Company. The compensation expense is a non-cash charge because the payments were made directly by the selling shareholder from the acquisition proceeds received from the Company. The Company did not expend additional cash with respect to the compensation charge. The correction had no effect on total stockholders’ equity at December 31, 2006.

The adjustments made as a result of the restatement are more fully discussed in Note 2, Restatement of Previously Issued Financial Statements, of the Notes to Consolidated Financial Statements in Part II, Item 8 and Management’s Discussion and Analysis of Financial Condition and Results of Operations in Part II, Item 7 of this Annual Report. For a description of the control deficiencies identified by management as a result of our internal reviews, and management’s plan to remediate those deficiencies, see Part II, Item 9A, Controls and Procedures.

Previously filed Annual Reports on Form 10-K and quarterly reports on Form 10-Q for the periods affected by the restatement have not been amended. Accordingly, investors should no longer rely upon the Company’s previously released financial statements for these periods and any earnings releases or other communications relating to these periods.

## **Business and Financial Overview**

We are a technology solutions provider, focused on delivering three broad categories of technology infrastructure to enterprise customers. Our solutions architectures consist of three broad categories of technology infrastructure: network infrastructure, unified communications and collaboration (“UC&C”) and data center. Our value-added proposition is delivered in the form of combining our professional services with select manufacturer’s products to address our customers’ needs. Our professional services include consulting, planning and design engineering, implementation engineering and system integration. We provide technology infrastructure solutions for enterprise-class organizations such as corporations, healthcare organizations, educational institutions, and Federal, state and local governmental agencies.

The market for the technology infrastructure solutions we provide is characterized by rapidly evolving and competing technologies. We compete with larger and better financed entities. We currently have sixteen physical offices in sixteen markets, which are located in Texas, California, Connecticut, Idaho, Massachusetts, New Mexico, North Carolina, Oklahoma, Oregon, Utah, Washington and Washington DC. We market to mid-tier enterprise-class organizations headquartered in, or making purchasing decisions from markets that we serve with branch offices. We plan to continue to expand by establishing additional branch offices in other markets, either by opening new offices or through acquisition.

The normal sales cycle for corporate customers typically ranges from three to six months depending on the nature, scope and size of the project. Our experience with governmental and educational organizations indicates that the sales cycle for these projects is generally about six to twelve months or longer.

We derive revenue from sales of both products and services. In 2010, 2009 and 2008, sales of products made up 87.2%, 81.1% and 82.0% of total revenue and services revenues made up 12.8%, 18.9% and 18.0% of total revenue, respectively.

Our gross profit margin on product sales is typically lower than our gross margin on service revenues. Our gross margin on product sales was 21.2%, 21.2% and 17.9% for 2010, 2009 and 2008, respectively, and our gross margin on service revenue was 21.1%, 25.7% and 29.0%, respectively, for those same periods. The market for the products we sell is competitive, and we compete with other resellers for our customers’ business.

The principal factors that determine gross margin on product sales include: (a) the mix of deal sizes as large transactions are more competitively bid and therefore have lower margins, (b) the mix of products and their life cycle status as new products and technologies have higher margins, and (c) the status of the customer relationship as newer client relationships may be more competitively bid.

Our annual and quarterly gross margins on product sales are materially affected by vendor incentives, most of which are Cisco incentive programs. The incentive programs sponsored by Cisco currently enable us to qualify for cash rebates or product pricing discounts. The most significant incentive is a Cisco incentive that is generally earned based on sales volumes of particular Cisco products and customer satisfaction levels. The amounts earned and costs incurred under these programs are a reduction to cost of goods sold but also increase our selling, general and administrative expenses related to additional sales commissions. We recognized vendor incentives of \$18,169, \$13,345 and \$10,118 in 2010, 2009 and 2008, respectively. Our product cost and resulting gross margin can vary significantly from quarter to quarter depending on vendor incentive criteria.

The principal factors that determine gross margin on service revenue include: (a) our ability to effectively manage utilization of our technical engineering resources, (b) the mix of different types of service engagements including the mix of fixed price and rate per hour arrangements, and (c) the amount of managed support and hosting services revenues we earned compared with the largely fixed costs to operate or support and hosting center operations.

Our selling, general and administrative expenses include both fixed and variable expenses. The fixed expenses include facility costs, administrative personnel costs, and some outside professional fees. The variable expenses are particularly in the form of commissions and travel related costs. Certain other expenses can rise and fall based on other less predictable factors, including legal fees and bad debt expense, among others.

Our business has grown through acquisition and as a consequence we have, over the course of time, had a variety of goodwill and other intangible assets. These assets are annually assessed for impairment and in 2010, 2009 and 2008 we incurred substantial impairment charges. In addition, we routinely structure our business combinations to include a significant portion of contingent consideration. Based on new accounting guidance effective after December 31, 2008, the estimated value of contingent consideration is recognized when the acquisition is consummated. Subsequent changes based on actual results or more current estimates are reflected in the Statement of Operations. Refer to Note 4 for additional information.

Due to our tax operating losses in 2005, 2006, 2007, and 2009 and the income tax benefit from the exercise of stock options, we had accumulated a net operating loss as of December 31, 2009 of approximately \$3,510. At December 31, 2010 all available loss carry-forwards have been utilized as the Company has generated positive taxable income.

Due to our substantial operating losses, at December 31, 2008 and 2009 we maintained a full valuation allowance against our net deferred tax assets. At June 30, 2010, we released the valuation allowance based on our current expectation that our net deferred tax assets were now realizable.

## **Acquisitions**

### **Marketware Inc.**

On December 31, 2009, we purchased the operations and certain assets, and assumed specified liabilities of Marketware Inc. ("Marketware"). Marketware, a Sacramento-based provider of Cisco IP-network-based physical security and networking solutions founded in 1982, generated revenue of approximately \$5,400 for the 12 months ended December 31, 2009. The acquisition initially added ten employees as part of an expanded Northern California region.

Consideration paid at closing consisted of \$350 in cash, of which \$35 was initially retained by us under defined holdback provisions and was subsequently paid. We incurred transaction costs of \$21. First year contingent consideration based on branch office operating income for the year ending December 31, 2010 was \$0. Second year contingent consideration for the year ending December 31, 2011, is a maximum of \$1,313, of which up to 50% may be paid in the form of common stock, at our option.

### **AdvancedNetworX, Inc.**

On July 17, 2009, we purchased the operations and certain assets, and assumed specified liabilities of AdvancedNetworX, Inc. ("ANX"). ANX, a Raleigh, North Carolina-based network consulting organization founded in September 2007, generated revenue of approximately \$1,700 for the 12 months ended June 30, 2009. The acquisition created a presence for INX in the Mid Atlantic region.

Consideration at closing totaled \$665, consisting of: (a) \$465 in cash, (b) \$156 in assumed liabilities under customer contracts, (c) \$34 in capital lease obligations assumed and (d) 2,000 shares of our common shares valued at \$5.08 per share for a total of \$10. The shares were initially held in escrow under holdback provisions as defined in the acquisition agreement and were subsequently issued. We incurred transaction costs of \$16.

First year contingent consideration for the year ending July 31, 2010, based on branch office operating income was \$0. Second and third year contingent consideration based on branch office operating income for the years ending July 31, 2011 and 2012 is a maximum of \$700 per year. Up to 60% of such additional purchase price may be paid in the form of common stock, at our option.

### **NetTeks Technology Consultants, Inc.**

On November 14, 2008, we purchased the operations and certain assets, and assumed specified liabilities of NetTeks Technology Consultants, Inc. ("NetTeks"). NetTeks is a Boston, Massachusetts-based network consulting organization with offices in downtown Boston and Glastonbury, Connecticut, with revenues for the twelve months ended September 30, 2008 of approximately \$12,700. The acquisition created a northeast presence for INX.

Consideration paid at closing consisted of \$1,350 in cash and 30,770 shares of our common stock, of which 15,385 shares were held in escrow under holdback provisions as defined in the acquisition agreement. Additional purchase price consideration of \$1,500 was paid in cash to NetTeks for exceeding the New England region operating income contribution target for the six month period ending December 31, 2009. Additional purchase price consideration of \$1,700 was earned by NetTeks for exceeding the New England region operating income contribution target for the year ending December 31, 2010. The additional consideration was paid in April 2011, consisting of a cash payment of \$850 and the issuance of 113,182 shares of the Company's common stock with a value of \$850. There is no further contingent consideration.

#### **VocalMash**

On December 4, 2008, we purchased the operations of VocalMash, a business owned and operated by our Vice President of Sales. VocalMash is an application integration company that utilizes Web 2.0 technologies to integrate unified communications systems with other enterprise applications.

Consideration paid at closing consisted of 60,000 shares of our common stock valued at \$4.89 per share for a total of \$293. The contingent consideration based on 2009 operating income was \$0.

#### **Access Flow, Inc.**

On June 6, 2008, we purchased the operations and certain assets, and assumed specified liabilities of Access Flow, Inc. ("AF"). AF is a Sacramento, California-based consulting organization focused on delivering VMware-based data center virtualization solutions, with revenues for the twelve months ended March 31, 2008 of approximately \$10,500. The acquisition increased our northern California presence and enhanced our VMware expertise.

Consideration paid at closing consisted of \$2,450 in cash and 262,692 shares of our common stock, of which 24,000 shares were placed in escrow under holdback provisions as defined in the acquisition agreement. During the quarter ended September 30, 2009, shares held in escrow were released to AF after a reduction of 3,359 shares representing \$34 for costs reimbursable under the AF asset purchase agreement escrow provisions. The 3,359 shares returned from escrow were retired. Upon the release of the remaining shares in escrow to AF, 1,032 shares in common stock representing \$14 were issued to the broker of the transaction. The two shareholders of AF entered into five-year non-compete agreements at closing, which provide for payments to each in the aggregate amount of \$50 in equal monthly installments of approximately \$8 each per month over the six month period subsequent to closing.

Additional purchase price consideration valued at \$497 and \$377 was earned by AF for the achievement of certain customer billing milestones during the twelve-month periods ending June 30, 2010 and 2009, respectively. The 2010 consideration consisted of a cash payment of \$248 and the issuance of 50,525 shares of our common stock with a value of \$249. In addition, cash of \$25 was paid to the broker of the transaction.

The 2009 consideration consisted of a cash payment of \$182 and issuance of 29,435 shares of our common stock with a value of \$195. In addition, cash of \$9 and 1,472 shares valued at \$10 were paid to the broker of the transaction.

#### **Results of Operations, Annual**

*Period Comparisons.* The following table sets forth, for the periods indicated, certain financial data derived from our consolidated statements of operations. Percentages shown in the table below are percentages of total revenue, except for the product and service components of cost of goods sold and gross profit, which are percentages of product and service revenue, respectively. As previously noted, the financial results for 2008 have been restated. See Note 2 to the consolidated financial statements in Part II, Item 8. The 2008 financial results, as previously reported, are provide for informational purposes.

Year Ended December 31,

	2010		2009		2008 (As Restated)		2008 (As Previously Reported)	
	Amount	%	Amount	%	Amount	%	Amount	%
	Revenue:							
Products	\$ 271,942	87.2	\$ 184,004	81.1	\$ 210,137	82.0	\$ 213,125	82.2
Services	40,035	12.8	42,943	18.9	46,183	18.0	46,032	17.8
Total revenue	<u>311,977</u>	<u>100.0</u>	<u>226,947</u>	<u>100.0</u>	<u>256,320</u>	<u>100.0</u>	<u>259,157</u>	<u>100.0</u>
Gross profit:								
Products	57,537	21.2	39,091	21.2	37,594	17.9	37,881	17.8
Services	8,448	21.1	11,050	25.7	13,409	29.0	13,250	28.8
Total gross profit	<u>65,985</u>	<u>21.2</u>	<u>50,141</u>	<u>22.1</u>	<u>51,003</u>	<u>19.9</u>	<u>51,131</u>	<u>19.7</u>
Selling, general and administrative expenses	63,341	20.4	51,811	22.8	48,740	19.0	48,784	18.8
Goodwill impairment charge	2,560	0.8	2,380	1.0	9,265	3.6	9,396	3.6
Other long-lived assets impairment charge	—	—	—	—	3,806	1.5	3,675	1.4
Adjustment of estimated contingent purchase consideration	(1,278)	(0.4)	109	—	—	—	—	—
Operating income (loss)	<u>1,362</u>	<u>0.4</u>	<u>(4,159)</u>	<u>(1.8)</u>	<u>(10,808)</u>	<u>(4.2)</u>	<u>(10,724)</u>	<u>(4.1)</u>
Interest and other (income) expense, net	(78)	—	(209)	(0.1)	16	—	16	—
Income tax (benefit) expense	(3,913)	(1.3)	345	0.2	1,961	0.8	2,011	0.8
Net income (loss) from continuing operations	<u>5,353</u>	<u>1.7</u>	<u>(4,295)</u>	<u>(1.9)</u>	<u>(12,785)</u>	<u>(5.0)</u>	<u>(12,751)</u>	<u>(4.9)</u>
(Loss) income from discontinued operations, net of taxes	—	—	(90)	—	37	—	37	—
Net income (loss)	<u>\$ 5,353</u>	<u>1.7</u>	<u>\$ (4,385)</u>	<u>(1.9)</u>	<u>\$ (12,748)</u>	<u>(5.0)</u>	<u>\$ (12,714)</u>	<u>(4.9)</u>

**Year Ended December 31, 2010 Compared to Year Ended December 31, 2009**

**Total Revenue.** Total revenue increased by \$85,030, or 37.5%, to \$311,977 from \$226,947. Products revenue increased by \$87,938 or 47.8%, to \$271,942 from \$184,004. The increase in products revenue is primarily due to a substantial increase in revenues in the Gulf Coast Region (\$31,532), Northwest Region (\$16,306), Southern California Region (\$10,444), Northern Texas (\$8,590), and New England Region (\$7,614) as a result of the improving economy and the elimination of the 2009 manufacturing backlog at Cisco. Services revenue decreased by \$2,908 or 6.8% to \$40,035 from \$42,943. The decrease in services revenue is primarily due to lower revenue in our Federal Division (\$6,628) related to a large subcontract, partially offset by increases in other regions, the largest increase of which was in the Northwest Region (\$2,334).

**Gross Profit.** Total gross profit increased by \$15,844, or 31.6%, to \$65,985 from \$50,141. Total gross profit as a percentage of sales decreased to 21.2% from 22.1%. Gross profit on product sales increased \$18,446, or 47.2%, to \$57,537 from \$39,091 as a result of increased sales and, as a percentage of product sales, was unchanged at 21.2%. Gross profit on services revenue decreased \$2,602 or 23.5% to \$8,448 from \$11,050 as a result of the lower Federal Division sales, and gross profit as a percent of services revenue decreased to 21.1% from 25.7% reflecting lower utilization.

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses increased by \$11,530, or 22.3% to \$63,341 from \$51,811. As a percentage of total revenue, these expenses decreased to 20.4% from 22.8% largely due to the large overall sales increase. The increase in the amount of selling, general and administrative expenses reflected restatement costs (\$4,129), higher sales commissions consistent with increased sales (\$3,632), and higher personnel costs due to increased headcount and improved operating results (\$3,568).

**Goodwill and Other Long-Lived Assets Impairment Charges.** The total impairment charge was \$2,560 in 2010 compared to \$2,380 in 2009. We performed our annual goodwill impairment tests during the fourth quarter of 2010 and 2009. In 2010, we determined that goodwill in the New England and Federal reporting units was impaired, primarily related to the additional goodwill incurred for 2010 earnouts payable on the NetTeks and AF acquisitions. During the first two quarters of 2010, the Northern California reporting unit generated substantial operating losses compared to the operating income forecast in connection with the 2009 annual goodwill impairment test. This triggered the requirement to perform an interim impairment test of both goodwill and long lived assets, resulting in the goodwill impairment charge recorded in the second quarter of 2010. In 2009, we determined that the goodwill of our New England, North Carolina, Federal, and VocalMash reporting units was impaired as result of the ongoing depressed operating results in the aftermath of the global financial crisis.

*Adjustment of Estimated Contingent Purchase Consideration.* The adjustment of estimated contingent purchase consideration was a reduction of expense of \$1,278 in 2010 compared to expense of \$109 in 2009. These adjustments were the result of the requirement beginning with acquisitions entered into after December 31, 2008 to measure and recognize contingent consideration at the time of the acquisition as part of the purchase price. The estimated contingent consideration is remeasured to fair value at each subsequent reporting date until settled.

*Operating Income (Loss).* Operating income increased \$5,521 to income of \$1,362 from a loss of \$4,159, primarily due to substantially increased sales in 2010 compared to 2009, partially offset by restatement costs of \$4,129.

*Interest and Other (Income) Expense, net.* Interest and other (income) expense, net, decreased \$131 to \$78 income from \$209 income primarily due to the lower interest rates earned on invested available cash.

*Income Tax (Benefit) Expense.* Income tax (benefit) expense increased by \$4,258 to a benefit of \$3,913 from expense of \$345. In 2009 we maintained a full valuation allowance against our net deferred tax assets. In 2010 we released the \$5,492 valuation allowance as income tax benefit based on our current expectation that our net deferred tax assets were now realizable.

*Loss from Discontinued Operations, net of tax.* The loss from discontinued operations decreased by \$90 due to lower legal costs on claims indemnified related to the Stratasoft operations sold in 2006.

*Net Income (Loss).* Net income increased \$9,738 to net income of \$5,353 from a net loss of \$4,385 due to the substantial increase in sales in 2010 compared to 2009 and the 2010 income tax benefit of \$3,913, partially offset by restatement costs of \$4,129.

#### ***Year Ended December 31, 2009 Compared to Year Ended December 31, 2008***

*Total Revenue.* Total revenue decreased by \$29,373, or 11.5%, to \$226,947 from \$256,320. Products revenue decreased by \$26,133 or 12.4%, to \$184,004 from \$210,137. The decrease in products revenue reflects lower revenues in the Gulf Coast Region (\$13,686), Northwest Region (\$9,566), New England Region (\$9,483) and several other regions, partially offset by higher sales in Northern Texas (\$8,466) and Central Texas Region (\$4,661), primarily due to depressed 2009 sales in the aftermath of the global financial crisis and a manufacturing backlog at Cisco which was not fully resolved until the middle of 2010. Services revenue decreased by \$3,240 or 7.0% to \$42,943 from \$46,183. The decrease in services revenue is largely due to lower revenues in our Federal Division (\$4,416) and Gulf Coast Region (\$3,858), partially offset by increases in the New England Region (\$3,125) resulting from the NetTeks acquisition and Central Texas Region (\$2,309).

*Gross Profit.* Total gross profit decreased by \$862, or 1.7%, to \$50,141 from \$51,003. Overall gross profit as a percentage of sales increased to 22.1% from 19.9%. Gross profit on product sales increased \$1,497, or 4.0%, to \$39,091 from \$37,594 and, as a percentage of product sales, increased to 21.2% from 17.9% due to higher vendor rebates. Gross profit on services revenue decreased \$2,359 or 17.6% to \$11,050 from \$13,409 as a result of lower sales and gross profit as a percent of services revenue decreased to 25.7% from 29.0% primarily due to the proportionately greater decrease in sales compared to the level of decrease in costs. Service costs which include engineer salaries are less variable than product costs.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$3,071, or 6.3% to \$51,811 from \$48,740. As a percentage of total revenue, these expenses increased to 22.8% from 19.0%. Higher selling, general and administrative expenses as a percentage of sales was due to increased headcount and higher depreciation and amortization costs resulting from a full year of expenses from the AF, NetTeks, and VocalMash acquisitions.

*Goodwill and Other Long-Lived Assets Impairment Charges.* The total impairment charges for goodwill and other long-lived assets was \$2,380 in 2009 compared to \$13,071 in 2008. We performed our annual goodwill impairment test during the fourth quarter of 2009 and 2008. In 2009, we determined that the goodwill of our New England, North Carolina, Federal, and VocalMash reporting units was impaired as result of the continued depressed operating results in the aftermath of the global financial crisis. In connection with this triggering event, we tested the recoverability of the long-lived assets for each reporting unit that failed step 1 of the goodwill impairment test and concluded their carrying values did not exceed fair value. In 2008, we performed our annual goodwill impairment test and concluded that the goodwill of our New England, Northern California, Southwest, Northwest and Southern California reporting units were impaired and recognized an impairment charge of \$9,265. In connection with this triggering event, we tested the recoverability of the long-lived assets for each reporting unit that failed step 1 of the goodwill impairment test and concluded the carrying values of intangible assets and property and equipment from the New England and Northern California reporting units were no longer recoverable. Consequently, during the fourth quarter of 2008, we incurred an impairment charge of \$3,806 to reduce the intangible assets and property and equipment down to their estimated fair values.

*Adjustment of Estimated Contingent Purchase Consideration.* The total adjustment of estimated contingent purchase consideration was expense of \$109 in 2009 and \$0 in 2008. This adjustment resulted from the re-measurement of contingent consideration as first estimated and recognized at the time of acquisition, as required for acquisitions entered into after December 31, 2008. The estimated contingent consideration is remeasured to fair value at each subsequent reporting date until settled with the seller with changes in fair value recognized in the results of operations.

*Operating Loss.* Operating loss decreased \$6,649 to a loss of \$4,159 in 2009 from a loss of \$10,808, primarily due to the decrease in impairment charges partially offset by higher selling, general and administrative expenses.

*Interest and Other (Income) Expense, net.* Interest and other (income) expense, net, changed by \$225 to income of \$209 from expense of \$16 substantially due to the elimination of borrowings under our senior credit facility in June 2008.

*Income Tax Expense.* Income tax expense decreased by \$1,616 to \$345 from \$1,961. The 2009 income tax expense primarily represents state margin tax. The 2008 income tax expense resulted primarily from the recording of the valuation allowance against deferred tax assets which was necessary due to the 2008 operating loss.

*(Loss) Income from Discontinued Operations, net of tax.* The loss from discontinued operations increased by \$127 due to 2009 legal costs of \$90, net of tax, on claims indemnified related to the Stratasoft operations sold in 2006 compared to the gain on sale of Valerent of \$37, net of tax, recognized in 2008.

*Net Loss.* Net loss decreased by \$8,363 to a net loss of \$4,385 from a net loss of \$12,748, primarily due to the lower 2009 impairment charge and income tax expense, partially offset by higher 2009 selling, general and administrative expenses.

#### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements.

#### **Liquidity and Capital Resources**

##### *Sources of Liquidity*

Our principal sources of liquidity are collections on accounts receivable and borrowings on our credit facility with Castle Pines Capital (the "Credit Facility"), as well as historically raised capital from the sale of equity, all of which we believe are sufficient to meet our short-term and long-term liquidity requirements. We use the Credit Facility to finance the majority of our purchases of inventory, and to provide working capital when our cash flow from operations is insufficient. In 2008, we eliminated borrowings under the interest-bearing portion of our Credit Facility. Our working capital increased to \$20,329 at December 31, 2010 from \$13,010 at December 31, 2009 and \$14,053 at December 31, 2008 as a result of improved operating results.

In June, 2008, we sold 900,000 shares of common stock through a registered direct offering to certain institutional investors at a price of \$11.00 per share. The net cash proceeds, after deducting the placement agent's fee and other offering expenses of \$1,149, were approximately \$8,751. The net cash proceeds were partially used to repay the \$6,000 outstanding balance under the Acquisition Facility, with the remainder to be used for general corporate purposes including possible future acquisitions. Due to the delays in our filings of SEC annual and quarterly reports due in 2010 and 2009, the shelf registration statement filed in 2008 on Form S-3 for primary offerings of securities is no longer available.

*Accounts Receivable.* The timing of our collection of accounts receivable is a significant influence on our cash flow from operations. We typically sell our products and services on short-term credit terms. We minimize our credit risk by performing credit checks, obtaining letters of credit in certain instances, and conducting our own collection efforts. Our accounts receivable, net of allowance for doubtful accounts, were \$64,493, \$52,269 and \$51,694 at December 31, 2010, 2009 and 2008, respectively. The increase in accounts receivable was attributable to significantly higher sales in 2010 compared to 2009 and 2008.

*Accounts Payable and Floor Plan Financing.* We rely on our Credit Facility to finance a substantial portion of our inventory purchases under terms ranging from 30 to 60 days. Credit Facility balances within terms, as defined, are non-interest bearing and classified as accounts payable floor plan in our balance sheet. Credit Facility balances outstanding in excess of terms are interest bearing and classified as notes payable in our balance sheet, of which there was no balance outstanding at December 31, 2010, 2009 or 2008. The total of accounts payable and accounts payable floor plan were \$50,552, \$50,243 and \$45,172 at December 31, 2010, 2009 and 2008, respectively. The 2010 increase was attributable to significantly increased purchases directly related to increased 2010 sales and the 2009 increase was primarily due to product received in 2009 that was shipped to the customer in the first quarter of 2010.

*Credit Facility.* On December 16, 2009, we amended our senior Credit Facility agreement (“Agreement”) with Castle Pines Capital LLC (“CPC”) which provides inventory financing and working capital funding. The Agreement provides a discretionary line of credit up to a maximum aggregate amount of \$70,000 to purchase inventory from CPC approved vendors. The Credit Facility is collateralized by substantially all of our assets and is for a one year period with automatic one year renewals, except as otherwise provided. The Agreement contains quarterly financial covenants concerning our current ratio, tangible net worth, and total liabilities to tangible net worth. The Agreement also contains other customary covenants. Termination date of the senior credit facility was extended to December 31, 2011, subject to automatic annual renewal as defined in the Amendment. We expect the Agreement to be extended under substantially similar terms.

The Agreement provides a working capital revolving line of credit under the above line of credit with an aggregate outstanding sublimit of \$10,000 with interest payable monthly at the rate of prime plus 0.5%. The Agreement also provides an additional \$10,000 credit facility specifically for acquisitions with interest payable at the rate of prime plus 2% and an acquisition commitment fee of 7/8 of 1% of advance amounts.

As of December 31, 2010, we were in compliance with the financial covenants contained in the Credit Facility, and we anticipate that we will be able to comply with these covenants during the next twelve months. In May 2011, CPC waived our events of default under the Agreement loan covenants regarding timely provision of GAAP financial statements. In the future, if we violate any of the loan covenants, we would be required to seek waivers from CPC for those non-compliance events. If CPC refused to provide waivers, the amount due under the Credit Facility could be accelerated and we could be required to seek other sources of financing.

To the extent we were unable to maintain our relationship with CPC on the same general terms and conditions as described above, we would endeavor to execute a similar relationship with another Cisco based floor plan financier.

See Part II, Item 8, Note 6, *Accounts Payable Floor Plan*, for additional details regarding the Credit Facility.

*Cash Flows.* Our cash decreased by \$1,158, increased by \$2,310, and increased by \$1,597 in 2010, 2009 and 2008, respectively.

*Operating Activities.* Operating activities provided \$4,555 in 2010 as compared to using \$578 in 2009 and using \$1,187 in 2008. Adjustments for non-cash-related items in 2010 used \$73 and primarily include the \$5,492 release of the valuation allowance on deferred income taxes partially offset by \$2,560 from impairment charges, \$2,847 from depreciation and amortization and \$2,224 from share-based compensation. Changes in asset and liability accounts used \$725, with accounts receivable using \$12,681 due to increased sales, primarily offset by funds provided by inventory (\$4,288), accounts payable (\$3,741), and other assets and liabilities (\$2,575). Adjustments for non-cash-related items in 2009 of \$8,068 primarily include \$2,380 from impairment charges, \$3,119 from depreciation and amortization and \$2,093 from share-based compensation. Changes in asset and liability accounts used \$4,261, of which inventory represented \$3,908 due to product received in the fourth quarter of 2009 for delivery to a customer in the first quarter of 2010. Adjustments for non-cash-related items in 2008 of \$17,438 included \$13,071 of impairment charges, \$2,667 from depreciation and amortization and \$1,731 from share-based compensation, partially offset by excess tax benefits from stock option exercises of \$1,085. Changes in asset and liability accounts used \$5,877, of which the most significant use was accounts receivable which used \$7,390 due to increased sales.

*Investing Activities.* Investing activities used \$3,340 in 2010 compared to using \$2,020 in 2009 and \$6,321 in 2008. Investing activities related to cash paid for acquisitions were \$1,773 in 2010, \$1,110 in 2009, and \$4,062 in 2008. Our investing activities related to capital expenditures in all three years were primarily related to purchases of computer equipment and software, and to a lesser degree, leasehold improvements.

*Financing Activities.* Financing activities used \$2,373 in 2010 compared to providing \$4,908 in 2009 and providing \$9,105 in 2008. Financing activities in 2010 and 2009 primarily consisted of net payments (\$3,432) and net borrowings (\$4,559) under the non-interest bearing floor plan financing facility, respectively. Financing activities in 2008 primarily include common stock issued through a registered direct offering (\$8,751), the proceeds of which were partially used to repay the 2007 borrowings for the Select, Inc. acquisition (\$6,000). Net borrowings under the floor plan financing provided cash of \$7,530 in 2008.

## **Critical Accounting Policies**

### ***Revenue Recognition***

Our products revenue consists of hardware and software purchased from other parties and resold to a customer. Products revenue also includes revenue from hardware maintenance contracts, hardware installation, support and training services that are provided solely by third parties who are the primary obligor of these services under the customer contract.

Our services revenue consists of professional services and managed services. Professional services include the planning, design, and implementation of the products and solutions that we provide. Managed services include remote monitoring and management of enterprise organizations’ network infrastructure, data center, wireless network and security technology, and remote disaster recovery hosting. Services revenue also includes hardware maintenance contracts for which we are the primary obligor.

We recognize revenue when persuasive evidence of a sale arrangement exists, delivery has occurred or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. The majority of our sales relate to physical products that are recognized when title and risk of loss to the products sold passes to the customer. Based on our standard shipping terms, title generally passes upon shipment of the product either by a vendor directly to the customer or by us to the customer. If the customer's contract states the title passes upon receipt by the customer, revenue is not recognized until we receive confirmation of delivery. Products revenue from services provided to customers by third parties are recorded on a net basis and recognized as revenue upon contracting with the third party service provider.

We resell certain third party software which does not require significant production, modification or customization. Such software is recognized when persuasive evidence of a sale arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collectability is reasonably assured.

Revenue for fixed and flat fee services contracts related to customized network and IP telephony solutions are generally recognized under a proportional performance model utilizing an input based approach (labor hours). Other service revenue is earned from providing stand-alone services such as billings for engineering and technician time, installation and programming services, which are provided on an hourly basis. Other service revenues are recognized when the service is performed and when collection is reasonably assured.

Managed services revenue includes remote monitoring and management of enterprise organizations' network infrastructure, data center, wireless network and security technology, remote disaster recovery hosting, and hardware maintenance contracts for which we are the primary obligor. Contracts under this revenue category are recognized ratably over the term of the underlying customer contract. Commission costs and third party support contracts paid in advance are deferred and recognized ratably over the term of the underlying customer contract.

When an arrangement contains multiple deliverables, such as more than one product item or a combination of products and one or more types of services, we determine whether the delivered items can be considered separate units of accounting as prescribed under multiple-element arrangement accounting guidance. Such guidance states that delivered items should be considered separate units of accounting if delivered items have value to the customer on a standalone basis, there is objective and reliable evidence of the fair value of undelivered items, and if delivery of undelivered items is probable and substantially in our control. Contracts entered into with customers, whether containing only product, only services, or a combination of products and services, are considered a single arrangement as are multiple contracts which were entered into separately but which were negotiated as a package.

If objective and reliable evidence exists for the fair value of all items in a multiple element arrangement, we recognize revenue based on the relative fair value of the separate elements. When there is objective and reliable evidence for the fair values of undelivered items but no such evidence exists for the items already delivered, the amount of revenue allocated to the delivered items is computed using the residual method. We have vendor-specific objective evidence ("VSOE") of fair value for our product and professional service deliverables and we do not have VSOE of fair value for our managed services deliverables. Because we do not have the ability to establish the fair value of our managed services deliverables, multiple element arrangements that contain managed services are recognized ratably over the initial term of the managed services contract that is part of the arrangement because our managed services are always the last element to be delivered in the arrangement. The costs of products and services and commission costs directly related to multiple element arrangements containing managed services are deferred and recognized ratably over the initial term of the managed services contract.

Contracts and customer purchase orders are generally used to determine the existence of an arrangement. Shipping documents and customer acceptance, when applicable, are used to verify delivery. If a customer contract contains unusual technical objective performance criteria to be met prior to customer acceptance that we cannot be certain of achieving, then revenue recognition is deferred until acceptance is obtained. Determination that the fee is fixed or determinable is based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. Accruals for estimated sales returns and other allowances and deferrals are recorded as a reduction of revenue at the time of revenue recognition. These provisions are based on contract terms and prior claims experience and involve significant estimates. If these estimates are significantly different from actual results, our revenue could be impacted.

Credit and collections policy is the basis for the determination of the collectability of amounts due from our customers, which requires us to use estimates and exercise judgment. We routinely monitor our customer's payment history and current credit worthiness to determine that collectability is reasonably assured and then, in some instances, require letters of credit in support of contracted amounts. This requires us to make frequent judgments and estimates in order to determine the appropriate period to recognize a sale to a customer and the amount of valuation allowances required for doubtful accounts. We record provisions for doubtful accounts when it becomes evident that the customer will not be able to make the required payments either at contractual due dates or in the future. Changes in the financial condition of our customers, either adverse or positive, could impact the amount and timing of any additional provision for doubtful accounts that may be required.

### ***Vendor Incentive Recognition***

We participate in vendor incentive programs, including a significant vendor incentive program with our primary vendor, Cisco. These incentives are generally earned based on sales volume and customer satisfaction levels. The amounts earned under these programs are accrued when they are deemed probable and can be reasonably measured; otherwise, they are recorded when they are declared by the vendor or the cash is received, whichever is earlier. We estimate vendor incentives based on total sales volume, sales of particular products or product classes, and anticipated customer satisfaction results. As a result of these estimates, the amount of rebates declared by the vendor, or the amount of rebates received in cash, the effect of vendor incentives on cost of goods can vary significantly between quarterly and annual reporting periods. Failure to achieve the requirements set by the vendor to earn a particular incentive could result in us not receiving a vendor incentive and result in lower gross margin on our product sales revenue. The incentives are recorded as a reduction of cost of goods.

### ***Share-Based Compensation Expense***

We account for share-based compensation in accordance with Accounting Standards Codification Section 718 (“ASC 718”), including the use of the “simplified method” as provided under SEC Staff Accounting Bulletin No. 110 (“SAB 110”), which requires the measurement and recognition of compensation expense based on estimated fair values for share-based payment awards.

We use the Black-Scholes option pricing model to calculate the grant-date fair value of an award. The fair value of options granted during the 2010, 2009 and 2008 periods were calculated using the following estimated weighted average assumptions:

	2010	2009	2008
Expected volatility	65%	75%	61%
Expected term (in years)	6.1	6.9	6.5
Risk-free interest rate	1.8%	3.0%	2.8%
Expected dividend yield	0%	0%	0%

Expected volatility is based on historical volatility over the period our current operations represented our primary line of business. We use the simplified method outlined in SAB 110 to estimate expected lives for options granted during the period. The risk-free interest rate is based on the yield on zero-coupon U.S. Treasury securities for a period that is commensurate with the expected term. We have not historically issued any dividends and do not expect to in the future.

We use the straight-line attribution method to recognize expense for unvested options. The amount of share-based compensation recognized during a period is based on the value of the awards that are ultimately expected to vest. ASC 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We will re-evaluate the forfeiture rate annually and adjust it as necessary, and the adjustments could be material.

### ***Goodwill***

We test our recorded goodwill annually for impairment as of the end of our fiscal year as well as whenever events or changes in circumstances indicate that the carrying value may not be recoverable, in accordance with Accounting Standards Codification Section 350 (“ASC 350”). Circumstances that could trigger an interim impairment test include but are not limited to: a significant adverse change in the business climate or legal factors; an adverse action or assessment by a regulator; unanticipated competition; loss of key personnel; the likelihood that a reporting unit or significant portion of a reporting unit will be sold or otherwise disposed; or results of testing for recoverability of a significant asset group within a reporting unit.

The goodwill impairment test consists of a two-step process. Step 1 of the impairment test involves comparing the fair values of the applicable reporting units with their carrying values, including goodwill. If the carrying amount of a reporting unit exceeds the reporting unit’s fair value, we perform Step 2 of the goodwill impairment test to determine the amount of impairment loss. Step 2 of the goodwill impairment test involves comparing the implied fair value of the affected reporting unit’s goodwill against the carrying value of that goodwill. In performing the first step of the impairment test, we reconcile the aggregate estimated fair value of our reporting units to our market capitalization (together with an implied control premium).

ASC 350 requires the testing of goodwill for impairment be performed at a level referred to as a reporting unit. We currently have eleven reporting units based primarily on our geographical regions, all of which have goodwill assigned. Goodwill is assigned based on (1) goodwill incurred in the purchase of the reporting unit, (2) goodwill allocated to reporting units existing at the time of an acquisition and directly benefiting from the business combination, and (3) goodwill allocated to reporting units based upon the relative amount of contingent consideration generated by a reporting unit’s customer billings attributable to criteria specified in the purchase agreement provisions. After reductions for impairment charges in 2010, 2009, and 2008, nine reporting units have goodwill carrying value which will be subject to future impairment tests.

To estimate the fair value of our reporting units, we use the income approach and the market approach. Once the fair value of each reporting unit is determined under each valuation method, we apply a weighting of 90% to the income approach and 10% to the market approach. We place greater reliance on the income approach because we believe the discounted cash flow projections are a more reliable methodology.

The income approach is based on a discounted cash flow analysis (“DCF”) and calculates the fair value by estimating the after-tax cash flows attributable to a reporting unit and then discounting the after-tax cash flows to a present value using a risk-adjusted discount rate. Assumptions used in the DCF require the exercise of significant judgment, including judgment about appropriate discount rates and terminal values, growth rates, and the amount and timing of expected future cash flows. The forecasted cash flows are based on our most recent budget and for years beyond the budget, the estimates are based on assumed growth rates. We believe the assumptions are consistent with the plans and estimates used to manage the underlying businesses. The discount rates, which are intended to reflect the risks inherent in future cash flow projections, used in the DCF are based on estimates of the weighted-average cost of capital of a market participant relative to each respective reporting unit. Such estimates are derived from our analysis of peer companies and considered the industry weighted average return on debt and equity from a market participant perspective for its reporting units.

Specific assumptions used were as follows:

	December 31, 2010	December 31, 2009	December 31, 2008
	Weighted-Average Cost of Capital	Weighted-Average Cost of Capital	Weighted-Average Cost of Capital
Discount rate methodology used			
Discount rate range by reporting units	19.3 – 27.3%	30.9 – 36.0%	28.4 - 28.7%
Five year compound annual revenue growth rate	4.1 – 28.8%	7.2 – 68.0%	(9.9) - 32.7%
Terminal year stable growth rate	3.7%	3.7%	3.5 – 4.0%

The market approach considers comparable market data based on multiples of revenue, gross profit, and earnings before taxes, depreciation and amortization (“EBITDA”), and net income. We believe the assumptions used to determine the fair value of our respective reporting units are reasonable. If different assumptions were used, particularly with respect to forecasted cash flows, WACCs, or market multiples, different estimates of fair value may result and there could be the potential that an impairment charge could result. Actual operating results and the related cash flows of the reporting units could differ from the estimated operating results and related cash flows. The valuation multiples calculated were as follows, where EV represents enterprise value (market capitalization plus interest bearing debt less cash and equivalents) and MVIC represents the market value of invested capital (market capitalization plus interest bearing debt):

	December 31, 2010	December 31, 2009	December 31, 2008
EV/Revenues	0.058x – 0.241x	—	—
MVIC/Revenues		0.10x – 0.35x	0.17x
MVIC/Gross profit	—	—	0.83x
MVIC/EBITDA	—	—	4.75x
Market cap/Net income	—	—	10.23x

As of December 31, 2010, the Northwest, Southern California, Gulf Coast, North Texas, and North Carolina reporting units with goodwill totaling \$5,034, had estimated fair values exceeding their carrying values by a minimum of 61%. The Southwest and Central Texas reporting units with goodwill totaling \$4,475 had estimated fair values exceeding their carrying values by 19% to 30%. The Northern California and New England reporting units with goodwill totaling \$4,023 had estimated fair values which approximated their carrying values as a result of the impairment charge recorded at December 31, 2010, 2009 and 2008. During 2009 the National reporting unit was merged into the Gulf Coast reporting unit and the NetTeks reporting unit was merged into the New England reporting unit.

With the exception of potential regional economic differences, the fair value of our reporting units is primarily affected by the forecasted demand and spending on technology products in our principal markets which are: network infrastructure, unified communications and data center products and services. Some of the inherent assumptions and estimates used in determining the estimated fair value of these reporting units are outside the control of management, including interest rates, cost of capital, and tax rates. It is possible that changes in circumstances, existing at the measurement date or at other times in the future, or in the numerous estimates associated with management’s judgments, assumptions and estimates made in assessing the fair value of our goodwill, may result in an impairment charge of a portion or all of the goodwill amounts previously noted. If we record an impairment charge, our financial position and results of operations could be adversely affected.

For illustrative purposes, had the December 31, 2010 fair values of each reporting unit been lower by 10%, there would have been a \$699 increase in the goodwill impairment charge recorded. Our goodwill balance was \$13,532, \$13,870 and \$12,882 as of December 31, 2010, 2009 and 2008, respectively.

### ***Impairment of Long-Lived Assets***

We record impairment losses on long-lived assets, such as amortizable intangible assets and property and equipment, when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. Evaluation of long-lived assets for impairment is performed at the asset group level, which represents the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. Our asset group level corresponds to the same level as the reporting units used in our goodwill impairment testing.

### ***Income Taxes***

Income taxes are accounted for under the asset and liability method. Under the asset and liability method, deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. This method also requires the recognition of future tax benefits for net operating loss ("NOL") carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized as income in the period that includes the enactment date. A valuation allowance is provided against deferred tax assets to the extent their realization is not more likely than not. The tax provision allocated to discontinued operations is based on the incremental tax effect after computing the tax provision on continuing operations. Uncertain tax positions and the related interest and penalties are provided for based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities.

### ***Recent Accounting Pronouncements***

In December 2010, the Financial Accounting Standards Board ("FASB") clarified required disclosures regarding pro forma revenue and earnings in a business combination. If comparative financial statements of an acquired business are presented, the revenue and earnings of the combined entity should be presented as though the business combination had occurred at the beginning of the prior reporting period only. In addition, the supplemental disclosures should include a description of the amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the pro forma revenue and earnings. The clarification is required to be applied to any business combination that closes after 2010 and early adoption is permitted. We will adopt the requirement for any business combination that closes after December 31, 2010.

In December 2010, the FASB clarified certain aspects of "carrying value" in applying step 1 of the goodwill impairment test to a reporting unit. The revised guidance does not prescribe a specific method of calculating the carrying value of a reporting unit, but it does require reporting units with negative or zero carrying value to be assessed for impairment using qualitative factors. If the qualitative factors indicate that it is more likely than not that impairment of goodwill exists, then step 2 of the goodwill impairment test must be performed. The new requirement is effective for years beginning after December 15, 2010 and early adoption is not permitted. Companies affected by this new standard are required to record a cumulative effect adjustment to beginning retained earnings in the period of adoption. The new standard is not expected to have a material effect because none of our reporting units with goodwill balances at December 31, 2010, have a negative or zero carrying value.

In July 2010, the FASB adopted enhanced disclosure requirements regarding financing receivables and allowance for credit losses, excluding short-term trade receivables or receivables measured at fair value or lower of cost or fair value. The enhanced disclosure requirements include information about the nature and credit risk inherent in the entity's financing receivables, our methods of analyzing and assessing credit risk in determining the allowance for credit losses and the changes and reasons for changes in the allowance for credit losses. The enhanced disclosure requirements are required to be adopted in our financial statements for the year ended December 31, 2010. Our financing receivables are currently short-term trade receivables which are excluded from such disclosures. The additional disclosure requirements will not have an impact on our results of operations or financial position.

In January 2010, the FASB enhanced existing requirements and added new requirements for disclosures of fair value measurements. Previous guidance required companies to disclose information about how management determined fair value for those assets and liabilities measured at fair value by categorizing such assets and liabilities in one of three categories: Level 1, Level 2 or Level 3. The new requirements enhance and amend these disclosures. Some of the new disclosures were required to be adopted, and were adopted in the first quarter ended March 31, 2010, with the remaining disclosures required to be adopted in the first quarter ended March 31, 2011. The additional disclosure requirements will not have an impact on our results of operations or financial position.

In October 2009, the FASB issued "Multiple-Deliverable Revenue Arrangements", amending guidance to require an entity to use an estimated selling price when vendor specific objective evidence or acceptable third party evidence does not exist for any products or services included in a multiple element arrangement. The arrangement consideration should be allocated among the products and services based upon their relative selling prices, thus eliminating the use of the residual method of allocation. Expanded qualitative and quantitative disclosures regarding significant judgments made and changes in applying this guidance are required. This guidance is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption and retrospective application are also permitted. We will adopt this guidance prospectively on January 1, 2011 and are currently evaluating the financial statement impact, although we do not expect the implementation of this standard to have a material impact on our results of operations or financial position.

In October 2009, the FASB issued "Certain Revenue Arrangements That Include Software Elements", amending guidance to exclude tangible products containing software components and non-software components that function together to deliver the product's essential functionality. Entities that sell joint hardware and software products that meet this scope exception will be required to follow this guidance, effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption and retrospective application are also permitted. We will adopt this guidance prospectively on January 1, 2011 and are currently evaluating the financial statement impact, although we do not expect the implementation of this standard to have a material impact on our results of operations or financial position.

#### **Restated Quarterly Financial Information**

Presented below are the Restated Condensed Consolidated Statements of Operations for the three months ended March 31, 2008, the six months ended June 30, 2008, and the nine months ended September 30, 2008. Also, presented below are the Restated Condensed Consolidated Balance Sheets for the seven quarterly periods ended September 30, 2009. The restatement adjustments are described in detail in Note 2 to the Consolidated Financial Statements in Part II, Item 8. In addition, the "00-21 Adjustments" column includes the correction of a "Selling, general and administrative expenses" error not directly related to the revenue accounting errors. This expense correction is an increase to selling, general and administrative expenses of \$69 and \$186 for the three months ended March 31, 2008, and the six months ended June 30, 2008, respectively, and is a reduction to expense of \$186 for the nine months ended September 30, 2008, when the error was previously corrected on a cumulative basis. We do not consider this error and the subsequent correction as presented here to be material to our results of operations and financial position for the periods involved.

The reconciliation of the restated quarterly financial data for the quarters ended March 31, 2009, June 30, 2009 and September 30, 2009 to amounts previously reported is provided in the Form 10-Q for each of the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010, which are filed contemporaneously with this Annual Report on Form 10-K.

**Restated Condensed Consolidated Statement of Operations for the Three Months Ended March 31, 2008**

	As Previously Reported	00-21 Adjustments	Shipping Terms	Net Presentation	As Restated
Revenue:					
Products	\$ 50,491	\$ 115	\$ (500)	\$ (673)	\$ 49,433
Services	9,152	(88)	—	—	9,064
<b>Total revenue</b>	<b>59,643</b>	<b>27</b>	<b>(500)</b>	<b>(673)</b>	<b>58,497</b>
Cost of Sales:					
Products	41,284	63	(510)	(673)	40,164
Services	6,212	(22)	35	—	6,225
<b>Total cost of products and services</b>	<b>47,496</b>	<b>41</b>	<b>(475)</b>	<b>(673)</b>	<b>46,389</b>
Gross profit	12,147	(14)	(25)	—	12,108
Selling, general and administrative expenses	10,384	55	(16)	—	10,423
Operating income (loss)	1,763	(69)	(9)	—	1,685
Other income (expense), net	(73)	—	—	—	(73)
Income (loss) before income taxes	1,690	(69)	(9)	—	1,612
Income tax expense (benefit)	683	(27)	(3)	—	653
Net income (loss) from continuing operations	1,007	(42)	(6)	—	959
Income from discontinued operations, net of taxes	4	—	—	—	4
<b>Net income (loss)</b>	<b>\$ 1,011</b>	<b>\$ (42)</b>	<b>\$ (6)</b>	<b>\$ -</b>	<b>\$ 963</b>
Basic net income per share:					
Net income from continuing operations	\$ 0.13				\$ 0.13
Income from discontinued operations, net of taxes	—				—
<b>Net income - basic</b>	<b>\$ 0.13</b>				<b>\$ 0.13</b>
Diluted net income per share:					
Net income from continuing operations	\$ 0.12				\$ 0.12
Income from discontinued operations, net of taxes	—				—
<b>Net income - diluted</b>	<b>\$ 0.12</b>				<b>\$ 0.12</b>
Weighted average shares - basic	7,550,904				7,550,904
Weighted average shares - diluted	8,242,191				8,242,191

**Restated Condensed Consolidated Statement of Operations for the Six Months Ended June 30, 2008**

	As Previously Reported	00-21 Adjustments	Shipping Terms	Net Presentation	As Restated
<b>Revenue:</b>					
Products	\$ 101,921	\$ 167	\$ (388)	\$ (1,052)	\$ 100,648
Services	21,713	95	—	—	21,808
<b>Total revenue</b>	<b>123,634</b>	<b>262</b>	<b>(388)</b>	<b>(1,052)</b>	<b>122,456</b>
<b>Cost of Sales:</b>					
Products	82,948	160	(383)	(1,052)	81,673
Services	14,787	(25)	12	—	14,774
<b>Total cost of products and services</b>	<b>97,735</b>	<b>135</b>	<b>(371)</b>	<b>(1,052)</b>	<b>96,447</b>
Gross profit	25,899	127	(17)	—	26,009
<b>Selling, general and administrative expenses</b>					
	22,255	204	(24)	—	22,435
Operating income (loss)	3,644	(77)	7	—	3,574
<b>Other income (expense), net</b>	<b>(171)</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>(171)</b>
Income (loss) before income taxes	3,473	(77)	7	—	3,403
<b>Income tax expense (benefit)</b>	<b>1,363</b>	<b>(35)</b>	<b>13</b>	<b>—</b>	<b>1,341</b>
Net income (loss) from continuing operations	2,110	(42)	(6)	—	2,062
<b>Income from discontinued operations, net of taxes</b>	<b>14</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>14</b>
<b>Net income (loss)</b>	<b>\$ 2,124</b>	<b>\$ (42)</b>	<b>\$ (6)</b>	<b>\$ -</b>	<b>\$ 2,076</b>
<b>Basic net income per share:</b>					
Net income from continuing operations	\$ 0.28				\$ 0.27
Income from discontinued operations, net of taxes	—				—
<b>Net income - basic</b>	<b>\$ 0.28</b>				<b>\$ 0.27</b>
<b>Diluted net income per share:</b>					
Net income from continuing operations	\$ 0.26				\$ 0.25
Income from discontinued operations, net of taxes	—				—
<b>Net income - diluted</b>	<b>\$ 0.26</b>				<b>\$ 0.25</b>
<b>Weighted average shares – basic</b>	<b>7,565,104</b>				<b>7,565,104</b>
<b>Weighted average shares – diluted</b>	<b>8,199,449</b>				<b>8,199,449</b>

**Restated Condensed Consolidated Statement of Operations for the Nine Months Ended September 30, 2008**

	As Previously Reported	00-21 Adjustments	Shipping Terms	Net Presentation	As Restated
<b>Revenue:</b>					
Products	\$ 161,497	\$ 149	\$ 158	\$ (1,805)	\$ 159,999
Services	34,079	88	—	—	34,167
<b>Total revenue</b>	<b>195,576</b>	<b>237</b>	<b>158</b>	<b>(1,805)</b>	<b>194,166</b>
<b>Cost of Sales:</b>					
Products	132,457	160	74	(1,805)	130,886
Services	23,894	(25)	12	—	23,881
<b>Total cost of products and services</b>	<b>156,351</b>	<b>135</b>	<b>86</b>	<b>(1,805)</b>	<b>154,767</b>
Gross profit	39,225	102	72	—	39,399
<b>Selling, general and administrative expenses</b>	<b>34,850</b>	<b>(3)</b>	<b>1</b>	<b>—</b>	<b>34,848</b>
Operating income (loss)	4,375	105	71	—	4,551
<b>Other income (expense), net</b>	<b>(65)</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>(65)</b>
Income (loss) before income taxes	4,310	105	71	—	4,486
<b>Income tax expense (benefit)</b>	<b>1,829</b>	<b>11</b>	<b>28</b>	<b>—</b>	<b>1,868</b>
Net income (loss) from continuing operations	2,481	94	43	—	2,618
<b>Income from discontinued operations, net of taxes</b>	<b>23</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>23</b>
Net income (loss)	<u>\$ 2,504</u>	<u>\$ 94</u>	<u>\$ 43</u>	<u>\$ —</u>	<u>\$ 2,641</u>
<b>Basic net income per share:</b>					
Net income from continuing operations	\$ 0.31				\$ 0.33
Income from discontinued operations, net of taxes	—				—
<b>Net income - basic</b>	<b>\$ 0.31</b>				<b>\$ 0.33</b>
<b>Diluted net income per share:</b>					
Net income from continuing operations	\$ 0.29				\$ 0.31
Income from discontinued operations, net of taxes	—				—
<b>Net income - diluted</b>	<b>\$ 0.29</b>				<b>\$ 0.31</b>
<b>Weighted average shares - basic</b>	<b>7,958,966</b>				<b>7,958,966</b>
<b>Weighted average shares - diluted</b>	<b>8,579,268</b>				<b>8,579,268</b>

## Results of Operations, Year to Date Quarterly

As restated, three Months Ended March 31, 2009 Compared to as restated March 31, 2008

	2009		2008	
	As Previously Reported	As Restated	As Previously Reported	As Restated
Revenue:				
Products	\$ 44,566	\$ 43,332	\$ 50,491	\$ 49,433
Services	12,767	12,605	9,152	9,064
<b>Total revenue</b>	<b>57,333</b>	<b>55,937</b>	<b>59,643</b>	<b>58,497</b>
Cost of products and services:				
Products	36,122	35,258	41,284	40,164
Services	8,908	8,752	6,212	6,225
<b>Total cost of products and services</b>	<b>45,030</b>	<b>44,010</b>	<b>47,496</b>	<b>46,389</b>
Gross profit	12,303	11,927	12,147	12,108
Selling, general and administrative expenses	12,728	12,702	10,384	10,423
Operating (loss) income	(425)	(775)	1,763	1,685
Interest and other income (expense), net	12	12	(73)	(73)
(Loss) income from continuing operations before income taxes	(413)	(763)	1,690	1,612
Income tax expense	50	—	683	653
Net (loss) income from continuing operations	(463)	(763)	1,007	959
(Loss) income from discontinued operations, net of income taxes	(39)	(39)	4	4
<b>Net (loss) income</b>	<b>\$ (502)</b>	<b>\$ (802)</b>	<b>\$ 1,011</b>	<b>\$ 963</b>

*Revenue.* Total revenue decreased by \$2,560, or 4.4%, to \$55,937 from \$58,497. Products revenue decreased \$6,101, or 12.3% to \$43,332 from \$49,433. The decrease in products revenue was primarily due to our markets becoming increasingly affected by the continuing macroeconomic downturn in the United States. We experienced lower revenue in the Northwest Region, National Division, Southwest Region, and Gulf Coast Region, partially offset by revenue from newly acquired locations in the New England Region and Northern California Region and increased products revenue from large projects in the Southern California and North Texas Regions. Services revenue increased \$3,541 or 39.1% to \$12,605 from \$9,064. Services revenue increased in the majority of our Regions, led by increases in the Federal Division, Central Texas Region, Southwest Region, and Southern California Region, and the newly acquired locations in the New England Region and Northern California Region.

*Gross Profit.* Total gross profit decreased by \$181, or 1.5%, to \$11,927 from \$12,108. Gross profit as a percentage of revenue increased to 21.3% from 20.7%, largely due to substantially higher 2009 services revenues relative to total revenues. Gross profit on products sales decreased \$1,195 or 12.9%, to \$8,074 from \$9,269 and, as a percentage of sales, decreased to 18.6% from 18.8%. Gross profit on services revenue increased \$1,014 or 35.7% to \$3,853 from \$2,839 and gross profit as a percent of services revenue decreased to 30.6% from 31.3%.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$2,279, or 21.9% to \$12,702 from \$10,423. As a percentage of total revenue, these expenses increased to 22.7% in 2009 versus 17.8% in 2008. Increased 2009 expenses reflect selling, general and administrative expenses of the operations acquired in the NetTeks, AF, and VocalMash acquisitions, additional sales and administrative personnel costs from headcount increases, and substantially higher audit and tax costs.

*Operating (Loss) Income.* Operating income decreased \$2,460 to a loss of \$775 from income of \$1,685, primarily due higher selling, general and administrative expenses. Although total revenue decreased, total gross profit was essentially unchanged due to the much higher gross profit margin on our services revenue.

*Interest and Other Income (Expense), Net.* Interest and other income (expense), net, changed by \$85 to income of \$12 from expense of \$73, primarily due to the elimination of borrowings under our senior credit facility in June 2008.

*Income Tax Expense (Benefit).* Income tax expense (benefit) decreased by \$653 to \$0 from expense of \$653, reflecting: (a) a pretax loss in 2009 and (b) a full valuation allowance against our deferred tax assets in 2009, as discussed further under “Deferred Tax Assets” below.

*Net (Loss) Income.* Net income decreased \$1,765 to a loss of \$802 from income of \$963, primarily due to higher selling, general and administrative expenses and the absence of a tax benefit against our losses in 2009.

*Deferred Tax Assets.* In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible. Management considers the reversal of deferred tax liabilities, projected future income, and tax planning strategies in making this assessment. Management's evaluation of the realizability of deferred tax assets must consider both positive and negative evidence. The weight given to the potential effects of positive and negative evidence is based on the extent to which it can be objectively verified. During the fourth quarter of 2008 and in the first quarter of 2009, we recorded a valuation allowance related to the net operating loss carry forwards and other temporary items as we determined it is more likely than not that we will not be able to use the assets to reduce future tax liabilities.

*As restated, six Months Ended June 30, 2009 Compared to as restated June 30, 2008*

	2009		2008	
	As Previously Reported	As Restated	As Previously Reported	As Restated
Revenue:				
Products	\$ 91,021	\$ 88,051	\$ 101,921	\$ 100,648
Services	24,660	24,065	21,713	21,808
<b>Total revenue</b>	<b>115,681</b>	<b>112,116</b>	<b>123,634</b>	<b>122,456</b>
Cost of products and services:				
Products	72,999	70,588	82,948	81,673
Services	17,654	17,113	14,787	14,774
<b>Total cost of products and services</b>	<b>90,653</b>	<b>87,701</b>	<b>97,735</b>	<b>96,447</b>
Gross profit	25,028	24,415	25,899	26,009
Selling, general and administrative expenses	25,053	24,985	22,255	22,435
Operating (loss) income	(25)	(570)	3,644	3,574
Interest and other income (expense), net	17	17	(171)	(171)
(Loss) income from continuing operations before income taxes	(8)	(553)	3,473	3,403
Income tax expense (benefit)	119	—	1,363	1,341
Net (loss) income from continuing operations	(127)	(553)	2,110	2,062
(Loss) income from discontinued operations, net of income taxes	(56)	(56)	14	14
<b>Net (loss) income</b>	<b>\$ (183)</b>	<b>\$ (609)</b>	<b>\$ 2,124</b>	<b>\$ 2,076</b>

*Revenue.* Total revenue decreased by \$10,340, or 8.4%, to \$112,116 from \$122,456. Products revenue decreased \$12,597, or 12.5% to \$88,051 from \$100,648. The decrease in products revenue was primarily due to the effect of the macroeconomic downturn in the United States. We experienced lower revenue in the Northwest Region, National Division, Central Texas Region, New England Region, Southwest Region, and Gulf Coast Region, partially offset by revenue from newly acquired locations in the New England Region and Northern California Region and increased products revenue in the North Texas and Southern California Regions. Services revenue increased \$2,257 or 10.3% to \$24,065 from \$21,808. Services revenue increased in the majority of our Regions, led by increases in the Federal Division, Central Texas Region, Southwest Region, and Southern California Region, and the newly acquired locations in the New England Region and Northern California Region.

*Gross Profit.* Total gross profit decreased by \$1,594, or 6.1%, to \$24,415 from \$26,009. Gross profit as a percentage of revenue increased to 21.8% from 21.2%. Gross profit on products decreased \$1,512 or 8.0%, to \$17,463 from \$18,975 and, as a percentage of sales, increased to 19.8% from 18.9% due to proportionately higher vendor rebates in 2009. Gross profit on services revenue decreased \$82 or 1.2% to \$6,952 from \$7,034 and gross profit as a percent of services revenue decreased to 28.9% from 32.3%. The services gross margin decreased in 2009 due to a higher proportion of projects with significant outside contractor costs which services typically have a lower gross profit and lower managed services gross profit associated with a higher cost base due to a new acquired location.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$2,550, or 11.4% to \$24,985 from \$22,435. As a percentage of total revenue, these expenses increased to 22.3% in 2009 versus 18.3% in 2008. Increased 2009 expenses reflect selling, general and administrative expenses of the operations acquired in the NetTeks, AF, and VocalMash acquisitions and additional sales and administrative personnel costs from headcount increases, partially offset by reduced commission expense due to lower gross profit and proportionately higher sales to non-commissioned accounts.

*Operating (Loss) Income.* Operating income decreased \$4,144 to a loss of \$570 from income of \$3,574, primarily due to lower sales and proportionately higher selling, general and administrative expenses.

*Interest and Other Income (Expense), Net.* Interest and other income (expense), net, changed by \$188 to income of \$17 from expense of \$171, due to the elimination of borrowings under our senior credit facility in June 2008.

*Income Tax Expense.* Income tax expense decreased by \$1,341 to \$0 from \$1,341, reflecting: (a) a pretax loss in 2009 and (b) a full valuation allowance against our deferred tax assets in 2009, as discussed further under “*Deferred Tax Assets*” below.

*Net (Loss) Income.* Net income decreased \$2,685 to a loss of \$609 from income of \$2,076, primarily due to lower sales, lower gross profit, proportionately higher selling, general and administrative expenses, and the absence of a tax benefit against over 2009 losses.

*Deferred Tax Assets.* In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible. Management considers the reversal of deferred tax liabilities, projected future income, and tax planning strategies in making this assessment. Management’s evaluation of the realizability of deferred tax assets must consider both positive and negative evidence. The weight given to the potential effects of positive and negative evidence is based on the extent to which it can be objectively verified. During the fourth quarter of 2008 and in the first and second quarters of 2009, we recorded a valuation allowance related to the net operating loss carry forwards and other temporary items as we determined it is more likely than not that we will not be able to use the assets to reduce future tax liabilities.

*As restated nine Months Ended September 30, 2009 Compared to as restated September 30, 2008*

	2009		2008	
	As Previously Reported	As Restated	As Previously Reported	As Restated
Revenue:				
Products	\$ 137,834	\$ 134,628	\$ 161,497	\$ 159,999
Services	35,706	35,231	34,079	34,167
<b>Total revenue</b>	<b>173,540</b>	<b>169,859</b>	<b>195,576</b>	<b>194,166</b>
Cost of products and services:				
Products	109,619	106,982	132,457	130,886
Services	25,926	25,431	23,894	23,881
<b>Total cost of products and services</b>	<b>135,545</b>	<b>132,413</b>	<b>156,351</b>	<b>154,767</b>
Gross profit	37,995	37,446	39,225	39,399
Selling, general and administrative expenses	38,337	38,234	34,850	34,848
Operating (loss) income	(342)	(788)	4,375	4,551
Interest and other income (expense), net	100	100	(65)	(65)
(Loss) income from continuing operations before income taxes	(242)	(688)	4,310	4,486
Income tax expense	212	66	1,829	1,868
Net (loss) income from continuing operations	(454)	(754)	2,481	2,618
(Loss) income from discontinued operations, net of income taxes	(104)	(104)	23	23
<b>Net (loss) income</b>	<b>\$ (558)</b>	<b>\$ (858)</b>	<b>\$ 2,504</b>	<b>\$ 2,641</b>

*Revenue.* Total revenue decreased by \$24,307, or 12.5%, to \$169,859 from \$194,166. Products revenue decreased \$25,371, or 15.9% to \$134,628 from \$159,999. The decrease in products revenue was primarily due to the effect of the macroeconomic downturn in the United States during the first and second quarter of 2009 and unanticipated product availability issues from our key vendor during the third quarter of 2009. Services revenue increased \$1,064 or 3.1% to \$35,231 from \$34,167. Professional services and managed service revenue increased by approximately the same amount. Professional services revenue increased in the Central Texas Region, Southwest Region, Southern California Region, and the newly acquired location in the New England Region, partially offset by decreases in the Federal Division, Gulf Coast Region, and Northwest Region. Managed services revenue increased in newly acquired New England and Northern California locations and existing Southern California Region partially offset by decreased revenue in the Gulf Coast Region.

*Gross Profit.* Total gross profit decreased by \$1,953, or 5.0%, to \$37,446 from \$39,399. Gross profit as a percentage of revenue increased to 22.0% from 20.3%, due to higher products revenue margins partially offset by lower services margins. Gross profit on products decreased \$1,467 or 5.0%, to \$27,646 from \$29,113 and, as a percentage of sales, increased to 20.5% from 18.2% due to proportionately higher 2009 vendor rebates and increased 2009 revenues for third party support contracts recorded on a net basis. Gross profit on services revenue decreased \$486 or 4.7% to \$9,800 from \$10,286 and gross profit as a percent of services revenue decreased to 27.8% from 30.1%. The services gross profit decreased in 2009 due to lower utilization of professional services on a cost base which is primarily fixed in nature and lower managed services gross profit resulting from a higher cost base due to a new acquired location.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$3,386, or 9.7% to \$38,234 from \$34,848. As a percentage of total revenue, these expenses increased to 22.5% in 2009 versus 18.0% in 2008. Increased 2009 expenses reflect selling, general and administrative expenses of the operations acquired in the NetTeks, AF, ANX, and VocalMash acquisitions, higher professional fees of \$506 primarily due to the restatement of prior period financial statements and the start of the annual audit in the third quarter of 2009 instead of the fourth quarter as in prior years. These increases were partially offset by lower bad debt expense and reduced commission expense due to lower sales and proportionately higher sales to non-commissioned accounts.

*Operating (Loss) Income.* Operating income decreased \$5,339 to a loss of \$788 from income of \$4,551, primarily due to lower sales and proportionately higher selling, general and administrative expenses, slightly offset by higher gross margin.

*Interest and Other Income (Expense), Net.* Interest and other income (expense), net, changed by \$165 to income of \$100 from expense of \$65, due to the elimination of borrowings under our senior credit facility in June 2008.

*Income Tax Expense.* Income tax expense decreased by \$1,802 to \$66 from \$1,868, reflecting: (a) a pretax loss in 2009 and (b) a full valuation allowance against our deferred tax assets in 2009, as discussed further under “*Deferred Tax Assets*” below.

*Net (Loss) Income.* Net income decreased \$3,499 to a loss of \$858 from income of \$2,641, primarily due to lower sales and proportionately higher selling, general and administrative expenses partially offset by higher gross margins and lower income tax expense.

*Deferred Tax Assets.* In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences generally become deductible. Management considers the reversal of deferred tax liabilities, projected future income, and tax planning strategies in making this assessment. Management’s evaluation of the realizability of deferred tax assets must consider both positive and negative evidence. The weight given to the potential effects of positive and negative evidence is based on the extent to which it can be objectively verified. During the fourth quarter of 2008 and through the nine months ended September 30, 2009, we recorded a valuation allowance related to the net operating loss carry forwards and other temporary items as we determined it is more likely than not that we will not be able to use the assets to reduce future tax liabilities.

Condensed Consolidated Balance Sheet as of December 31, 2009 and Restated Condensed Consolidated Balance Sheets for the Seven Quarterly Periods Ended September 30, 2009:

	2009				2008			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
	(As Restated)	(As Restated)	(As Restated)	(As Restated)	(As Restated)	(As Restated)	(As Restated)	(As Restated)
<b>ASSETS</b>								
Current assets:								
Cash and cash equivalents	\$ 13,247	\$ 12,116	\$ 13,181	\$ 8,681	\$ 10,937	\$ 15,806	\$ 12,604	\$ 8,236
Accounts receivable, net	52,269	45,511	50,306	46,071	51,694	51,080	51,293	44,488
Inventory, net	7,527	1,963	1,504	3,156	3,610	2,159	1,852	2,433
Deferred costs	1,497	1,073	1,466	1,349	352	354	808	1,090
Deferred income taxes	—	—	—	—	—	2,072	2,072	2,072
Other current assets	1,106	1,063	1,241	1,229	1,059	883	969	1,486
Total current assets	75,646	61,726	67,698	60,486	67,652	72,354	69,598	59,805
Property and equipment, net	4,833	4,576	4,569	4,998	5,207	5,593	5,019	4,586
Goodwill	13,870	14,085	13,256	12,882	12,882	21,438	21,010	16,663
Intangible assets, net	1,760	1,423	1,349	1,536	1,721	4,146	4,758	3,011
Other assets	257	53	53	—	—	—	—	—
Total assets	\$ 96,366	\$ 81,863	\$ 86,925	\$ 79,902	\$ 87,462	\$ 103,531	\$ 100,385	\$ 84,065
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>								
Current liabilities:								
Current portion of capital lease obligations	\$ 192	\$ 198	\$ 189	\$ 191	\$ 77	\$ 77	\$ —	\$ —
Accounts payable floor plan	44,561	31,294	35,936	31,512	40,002	38,285	35,536	30,693
Accounts payable	5,682	5,721	6,097	5,108	5,170	4,434	6,068	4,794
Accrued payroll and related costs	4,679	5,077	4,793	4,764	4,266	5,341	5,094	4,412
Accrued expenses	4,838	1,796	2,939	2,082	2,641	3,114	2,525	1,796
Deferred revenue	2,402	2,080	2,205	2,081	1,024	671	973	1,174
Other current liabilities	282	133	128	219	419	376	317	6,617
Total current liabilities	62,636	46,299	52,287	45,957	53,599	52,298	50,513	49,486
Non-current liabilities:								
Non-current portion of capital lease obligations	216	267	290	308	163	176	—	—
Deferred income taxes	—	—	—	—	—	1,565	1,565	1,565
Other liabilities	1,535	608	285	317	250	301	251	332
Total liabilities	64,387	47,174	52,862	46,582	54,012	54,340	52,329	51,383
Commitments and contingencies								
Stockholders' equity:								
Preferred stock	—	—	—	—	—	—	—	—
Common stock	91	89	88	88	87	87	87	74
Additional paid-in capital	54,269	53,454	52,580	52,030	51,359	51,711	50,401	36,893
Common stock issuable	—	—	—	—	—	—	740	—
Accumulated deficit	(22,381)	(18,854)	(18,605)	(18,798)	(17,996)	(2,607)	(3,172)	(4,285)
Total stockholders' equity	31,979	34,689	34,063	33,320	33,450	49,191	48,056	32,682
Total liabilities and stockholders' equity	\$ 96,366	\$ 81,863	\$ 86,925	\$ 79,902	\$ 87,462	\$ 103,531	\$ 100,385	\$ 84,065

**Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

**Interest Rate Risk**

We attempt to manage our borrowings under our senior credit facility (“Senior Facility”) and under our acquisition facility (“Acquisition Facility”) with Castle Pines Capital LLC to minimize interest expense. The interest rate of the Senior Facility is the prime rate plus 0.5% and the interest rate of the Acquisition Facility is the prime rate plus 2.0% (see “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources”). During the years ended December 31, 2010 and 2009, there were no borrowings under the Senior Facility or the Acquisition Facility. During the year ended December 31, 2008, there were no borrowings under the Senior Facility and there was \$6,000 outstanding under the Acquisition Facility until June, 2008, when it was repaid with the cash proceeds of common stock sold through a registered direct offering. The interest rates of borrowings under the Acquisition Facility during 2008 ranged from 5.5% to 7.75%. A one percent change in variable interest rates would not have a material impact on our results of operations or cash flows.

*Item 8. Financial Statements and Supplementary Data*

**INX INC. AND SUBSIDIARIES**

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AND FINANCIAL STATEMENT SCHEDULE**

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Board of Directors and Shareholders  
INX Inc.

We have audited the accompanying consolidated balance sheets of INX Inc. (a Delaware corporation) and subsidiaries as of December 31, 2010, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2010. Our audits of the basic consolidated financial statements included the financial statement schedule listed in the index appearing under Item 15(a)(2). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of INX Inc. and subsidiaries as of December 31, 2010, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2010 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 2, the 2008 financial statements have been restated to correct misstatements related to revenue recognition and presentation and employee compensation related to contingent acquisition consideration.

/s/ GRANT THORNTON LLP

Chicago, Illinois  
June 3, 2011

**INX INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share and par value amounts)

	December 31,		
	2010	2009	2008
			(As Restated Note 2)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 12,089	\$ 13,247	\$ 10,937
Accounts receivable, net of allowance of \$651, \$295, and \$735, respectively	64,493	52,269	51,694
Inventory, net	3,239	7,527	3,610
Deferred costs	2,767	1,497	352
Deferred income taxes	4,146	—	—
Other current assets	960	1,106	1,059
Total current assets	<u>87,694</u>	<u>75,646</u>	<u>67,652</u>
Property and equipment, net	4,793	4,833	5,207
Goodwill	13,532	13,870	12,882
Intangible assets, net	1,015	1,760	1,721
Deferred income taxes	2,029	—	—
Other assets	75	257	—
Total assets	<u>\$ 109,138</u>	<u>\$ 96,366</u>	<u>\$ 87,462</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Current portion of capital lease obligations	\$ 178	\$ 192	\$ 77
Accounts payable floor plan	41,129	44,561	40,002
Accounts payable	9,423	5,682	5,170
Accrued payroll and related costs	7,145	4,679	4,266
Accrued expenses	3,974	4,838	2,641
Deferred revenue	4,055	2,402	1,024
Other current liabilities	1,461	282	419
Total current liabilities	<u>67,365</u>	<u>62,636</u>	<u>53,599</u>
Non-current liabilities:			
Non-current portion of capital lease obligations	55	216	163
Other liabilities	874	1,535	250
Total liabilities	<u>68,294</u>	<u>64,387</u>	<u>54,012</u>
Commitments and contingencies			
Stockholders' equity:			
Preferred stock, \$.01 par value, 5,000,000 shares authorized, no shares issued	—	—	—
Common stock, \$.01 par value, 15,000,000 shares authorized, 9,514,542, 9,103,253 and 8,709,304 issued and outstanding, respectively	95	91	87
Additional paid-in capital	57,777	54,269	51,359
Accumulated deficit	(17,028)	(22,381)	(17,996)
Total stockholders' equity	<u>40,844</u>	<u>31,979</u>	<u>33,450</u>
Total liabilities and stockholders' equity	<u>\$ 109,138</u>	<u>\$ 96,366</u>	<u>\$ 87,462</u>

The accompanying notes are an integral part of these consolidated financial statements

**INX INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except share and per share amounts)

	Year Ended December 31,		
	2010	2009	2008 (As Restated, Note 2)
<b>Revenue:</b>			
Products	\$ 271,942	\$ 184,004	\$ 210,137
Services	40,035	42,943	46,183
<b>Total revenue</b>	<b>311,977</b>	<b>226,947</b>	<b>256,320</b>
<b>Cost of products and services:</b>			
Products	214,405	144,913	172,543
Services	31,587	31,893	32,774
<b>Total cost of products and services</b>	<b>245,992</b>	<b>176,806</b>	<b>205,317</b>
<b>Gross profit</b>	<b>65,985</b>	<b>50,141</b>	<b>51,003</b>
Selling, general and administrative expenses	63,341	51,811	48,740
Goodwill impairment charges	2,560	2,380	9,265
Other long-lived assets impairment charges	—	—	3,806
Adjustments to estimated contingent purchase consideration	(1,278)	109	—
<b>Operating income (loss)</b>	<b>1,362</b>	<b>(4,159)</b>	<b>(10,808)</b>
Interest expense	(29)	(64)	(330)
Interest income	10	40	357
Other income (expense), net	97	233	(43)
<b>Income (loss) before income taxes</b>	<b>1,440</b>	<b>(3,950)</b>	<b>(10,824)</b>
Income tax (benefit) expense	(3,913)	345	1,961
<b>Net income (loss) from continuing operations</b>	<b>5,353</b>	<b>(4,295)</b>	<b>(12,785)</b>
Income (loss) from discontinued operations, net of taxes	—	(90)	37
<b>Net income (loss)</b>	<b>\$ 5,353</b>	<b>\$ (4,385)</b>	<b>\$ (12,748)</b>
<b>Basic net income (loss) per share:</b>			
Net income (loss) from continuing operations	\$ 0.58	\$ (0.49)	\$ (1.57)
Income (loss) from discontinued operations, net of taxes	—	(0.01)	—
<b>Net income (loss) per share - Basic</b>	<b>\$ 0.58</b>	<b>\$ (0.50)</b>	<b>\$ (1.57)</b>
<b>Diluted net income (loss) per share:</b>			
Net income (loss) from continuing operations	\$ 0.54	\$ (0.49)	\$ (1.57)
Income (loss) from discontinued operations, net of taxes	—	(0.01)	—
<b>Net income (loss) per share - Diluted</b>	<b>\$ 0.54</b>	<b>\$ (0.50)</b>	<b>\$ (1.57)</b>
<b>Weighted average shares - Basic</b>			
	9,263,841	8,830,228	8,133,165
<b>Weighted average shares - Diluted</b>			
	9,901,223	8,830,228	8,133,165

The accompanying notes are an integral part of these consolidated financial statements

**INX INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands, except share and per share amounts)

	\$.01 Par Value Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance at December 31, 2007, as previously reported	7,548,892	\$ 75	\$ 36,497	\$ (4,545)	\$ 32,027
Cumulative effect of correction of accounting for revenue recognition	—	—	(33)	(31)	(64)
Cumulative effect of correction of accounting for contingent acquisition purchase consideration	—	—	672	(672)	—
Balance at January 1, 2008, as restated (Note 2)	7,548,892	75	37,136	(5,248)	31,963
Issuance of common stock, net of issuance costs of \$1,149	900,000	9	8,742	—	8,751
Exercise of common stock options	151,624	2	829	—	831
Issuance of vested restricted common stock	50,265	—	—	—	—
Issuance of shares as additional purchase price consideration for Network Architects, Corp. acquisition	75,000	1	740	—	741
Issuance of shares as purchase price consideration and broker fees for Access Flow, Inc. acquisition	274,627	3	3,583	—	3,586
Issuance of shares as purchase price consideration for NetTek Technology Consultants, Inc. acquisition	30,770	—	163	—	163
Issuance of shares as purchase price consideration for VocalMash acquisition	60,000	1	292	—	293
Share-based compensation expense related to employee stock options and employee restricted stock grants	—	—	1,422	—	1,422
Share-based compensation expense related to directors' stock grants	7,443	—	90	—	90
Share-based compensation expense related to Employee Stock Purchase Plan	—	—	193	—	193
Issuance of common stock under the Employee Stock Purchase Plan	77,600	1	343	—	344
Excess tax benefit from stock option exercises	—	—	1,085	—	1,085
Issuance of common stock grant	6,000	—	26	—	26
Exercise of warrants	3,155	—	—	—	—
Purchase and retirement of stock resulting from grantee election to fund payroll taxes out of restricted stock grant	(9,868)	—	(56)	—	(56)
Repurchase and retirement of common stock	(466,204)	(5)	(3,229)	—	(3,234)
Net loss, as restated (Note 2)	—	—	—	(12,748)	(12,748)
Balance at December 31, 2008, as restated (Note 2)	8,709,304	87	51,359	(17,996)	33,450
Exercise of common stock options	12,447	—	48	—	48
Issuance of vested restricted common stock	140,329	1	(1)	—	—
Issuance of shares as additional purchase price consideration and broker fees for Access Flow, Inc. acquisition	28,580	—	185	—	185
Issuance of shares as purchase price consideration for AdvancedNetworX, Inc. acquisition	2,000	—	10	—	10

**INX INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY, continued**  
(In thousands, except share and per share amounts)

	\$.01 Par Value Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount			
Issuance of common stock options to sole stockholder of Marketware Inc. in connection with acquisition	—	—	23	—	23
Share-based compensation expense related to employee stock options and employee restricted stock grants	—	—	1,656	—	1,656
Share-based compensation expense related to directors' stock grants	19,149	—	90	—	90
Share-based compensation expense related to Employee Stock Purchase Plan	—	—	347	—	347
Issuance of common stock under the Employee Stock Purchase Plan	238,919	3	689	—	692
Excess tax benefit from stock option exercises	—	—	67	—	67
Purchase and retirement of stock resulting from grantee election to fund payroll taxes out of restricted stock grant	(28,009)	—	(138)	—	(138)
Repurchase and retirement of common stock	(19,466)	—	(66)	—	(66)
Net loss	—	—	—	(4,385)	(4,385)
Balance at December 31, 2009	9,103,253	91	54,269	(22,381)	31,979
Exercise of common stock options	18,890	—	28	—	28
Issuance of vested restricted common stock	202,730	2	(2)	—	—
Issuance of shares as purchase price consideration and broker fees for Access Flow, Inc. acquisition	50,525	1	248	—	249
Share-based compensation expense related to employee stock options and employee restricted stock grants	—	—	1,699	—	1,699
Share-based compensation expense related to Employee Stock Purchase Plan	—	—	276	—	276
Issuance of common stock under the Employee Stock Purchase Plan	183,478	1	769	—	770
Excess tax benefit from stock option exercises	—	—	715	—	715
Issuance of common stock grant	10,000	—	53	—	53
Purchase and retirement of stock resulting from grantee election to fund payroll taxes out of restricted stock grant	(54,334)	—	(278)	—	(278)
Net income	—	—	—	5,353	5,353
Balance at December 31, 2010	9,514,542	\$ 95	\$ 57,777	\$ (17,028)	\$ 40,844

The accompanying notes are an integral part of these consolidated financial statements

**INX INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year Ended December 31,		
	2010	2009	2008 (As Restated, Note 2)
<b>Cash flows from operating activities:</b>			
Net income (loss)	\$ 5,353	\$ (4,385)	\$ (12,748)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
(Income) loss from discontinued operations, net of tax	—	90	(37)
Depreciation and amortization	2,847	3,119	2,667
Share-based compensation expense	2,224	2,093	1,731
Impairment charges	2,560	2,380	13,071
Adjustment to estimated acquisition contingent consideration	(1,278)	109	—
Excess tax benefits from stock option exercises	(715)	(67)	(1,085)
Provision for doubtful accounts	457	294	541
Deferred income tax	(6,175)	—	507
Loss on disposal of property and equipment	7	50	43
Changes in assets and liabilities:			
Accounts receivable, net	(12,681)	(869)	(7,390)
Inventory	4,288	(3,908)	(1,796)
Accounts payable	3,741	512	456
Accrued expenses	1,352	352	1,413
Other assets and liabilities	2,575	(348)	1,440
Net cash provided by (used in) operating activities	<u>4,555</u>	<u>(578)</u>	<u>(1,187)</u>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(1,573)	(918)	(2,260)
Acquisition of NetTeks Technology Consultants, Inc.	(1,500)	—	(1,440)
Acquisition of Access Flow, Inc.	(273)	(209)	(2,550)
Acquisition of AdvancedNetworX, Inc.	—	(465)	—
Acquisition of Marketware Inc.	—	(411)	—
Acquisition of Select, Inc.	—	(25)	153
Proceeds from sale of property and equipment	6	8	1
Transaction costs paid for acquisitions	—	—	(225)
Net cash used in investing activities	<u>(3,340)</u>	<u>(2,020)</u>	<u>(6,321)</u>
<b>Cash flows from financing activities:</b>			
(Payments) borrowings under non-interest bearing floor plan financing, net	(3,432)	4,559	7,530
Excess tax benefits from stock option exercises	715	67	1,085
Proceeds from shares issued under Employee Stock Purchase Plan	770	692	344
Payments on other borrowings	(176)	(254)	(601)
Purchase of stock resulting from grantee election	(278)	(138)	(61)
Proceeds from exercise of stock options	28	48	831
Proceeds from issuance of common stock	—	—	8,751
Payments on borrowings under acquisition credit facility	—	—	(6,000)
Purchase of common stock	—	(66)	(3,234)
Proceeds from other borrowings	—	—	460
Net cash (used in) provided by financing activities	<u>(2,373)</u>	<u>4,908</u>	<u>9,105</u>
Net increase (decrease) in cash and cash equivalents	(1,158)	2,310	1,597
Cash and cash equivalents at beginning of period	13,247	10,937	9,340
Cash and cash equivalents at end of period	<u>\$ 12,089</u>	<u>\$ 13,247</u>	<u>\$ 10,937</u>
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid for interest	\$ 25	\$ 67	\$ 256
Cash paid for income taxes	\$ 297	\$ 294	\$ 156
<b>Supplemental disclosure of non-cash finance and investing activities:</b>			
Capital lease obligations	\$ 14	\$ 297	\$ —
Purchase of software for debt	\$ —	\$ 672	\$ —
Issuance of vested restricted common stock	\$ 1,333	\$ 1,090	\$ 591

The accompanying notes are an integral part of these consolidated financial statements

**INX INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**For the Years Ended December 31, 2010, 2009 and 2008**  
**(In thousands, except share and per share amounts)**

**1. Summary of Significant Accounting Policies**

(a) Description of Business

INX Inc. ("INX" or the "Company") is a provider of technology infrastructure solutions for enterprise-class organizations such as corporations, schools and Federal, state and local governmental agencies. The solutions INX provides consist of three broad categories of technology infrastructure: network infrastructure, unified communications and collaboration and virtualized data center. The accompanying consolidated financial statements include the accounts of INX and its wholly-owned subsidiaries, Select, Inc. and Valerent, Inc. All intercompany transactions and accounts are eliminated in consolidation. Select, Inc. and Valerent, Inc. were merged into INX on December 31, 2008.

(b) Basis of Presentation

During 2006, the Company sold the Stratasoft subsidiary and Valerent operations as further discussed in Note 12. The Stratasoft and Valerent results of operations are classified as discontinued operations for all periods presented. The Company has concluded that its continuing operations comprise one reportable segment. In making this determination, the Company considered that each reporting unit has similar characteristics and long-term prospects, sells similar products, performs similar services, has similar types of customers and is subject to the same regulatory environment.

Certain prior period amounts in the balance sheets, statements of operations, and statements of cash flows presented herein have been reclassified to conform to the current period presentation.

(c) Principles of Consolidation

The accompanying consolidated financial statements include the accounts of INX Inc. and its subsidiaries. All significant intercompany balances and transactions have been eliminated.

(d) Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenue and expense during the reporting period. Actual results could differ from those estimates.

(e) Cash and Cash Equivalents

Cash equivalents consist of highly liquid investments with original maturity of three months or less when purchased. The Company maintains its cash in bank deposit accounts. At December 31, 2010, interest bearing accounts are insured up to \$250 and are fully insured for non-interest bearing accounts due to the passage of the Dodd-Frank Act in December 2010. The Company has not experienced any losses in interest bearing accounts.

(f) Accounts Receivable

Trade accounts receivable are recorded at the invoiced amount, are non-interest bearing and are recorded net of reserves for sales returns and allowances and an allowance for doubtful accounts. The Company extends credit to its customers in the normal course of business and generally does not require collateral or other security. The Company performs ongoing credit evaluations of its customers' financial condition and, in some instances, requires letters of credit or additional guarantees in support of contracted amounts. Earnings are charged with a provision for doubtful accounts based on a current review of the collectability of the accounts and using a systematic approach based on historical collections and age of the amounts due. Accounts deemed uncollectible are applied against the allowance for doubtful accounts. Accruals for estimated sales returns and other allowances and deferrals are recorded as a reduction of revenue at the time of revenue recognition. These provisions are based on contract terms and prior claims experience and involve significant estimates.

(g) Inventory

Inventory consists primarily of network equipment, computer equipment and components and is valued at the lower of cost or market with cost determined on the first-in first-out method. Substantially all inventory is finished goods. The Company reviews its inventory for slow moving and obsolete products each reporting period. Products that have not sold within one year are considered to be slow moving. The potential for sale of slow moving and obsolete inventories is considered through market research of technology advances, analysis of customers' current needs, and assumptions about future demand and market conditions. If the inventory is deemed to be slow moving or obsolete, then the value is reduced to the lower of cost or market value based on current market pricing for similar products.

(h) Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are recognized using the straight-line method over the estimated useful lives of the related assets. Repairs and maintenance are charged to expense when incurred. Disposals are removed at cost less accumulated depreciation with the resulting gain or loss recognized in the year of disposal.

(i) Goodwill

Goodwill is the excess of the purchase price over the fair values assigned to the assets and liabilities acquired in business combinations. Goodwill is not amortized, but is subject to periodic testing for impairment. Goodwill is tested for impairment on an annual basis during the fourth quarter and more frequently if facts and circumstances indicate goodwill carrying values exceed estimated reporting unit fair values. The annual goodwill impairment test consists of a two-step process as follows:

*Step 1.* The Company compares the fair value of each reporting unit to its carrying amount, including the existing goodwill. The fair value of each reporting unit is determined using a discounted cash flow valuation analysis. The carrying value of each reporting unit is determined by specifically identifying and allocating the assets and liabilities to each reporting unit. If the carrying amount of a reporting unit exceeds its fair value, an indication exists that the reporting unit's goodwill may be impaired and the Company then performs the second step of the impairment test. If the fair value of a reporting unit exceeds its carrying amount, no further analysis is required.

*Step 2.* The Company compares the implied fair value of the reporting unit's goodwill, determined by allocating the reporting unit's fair value to all of its assets and its liabilities in a manner similar to a purchase price allocation, to its carrying amount. If the carrying amount of the reporting unit's goodwill exceeds its fair value, an impairment loss will be recognized in an amount equal to that excess.

Based on the impairment tests performed, the Company determined there were impairments of goodwill in 2010, 2009 and 2008 resulting in impairment charges as further discussed in Note 4.

(j) Intangible Assets

Intangible assets are amortized over their estimated useful lives of two to five years.

(k) Impairment of Long-Lived Assets

Impairment charges are incurred for long-lived assets used in operations other than goodwill when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. Testing for impairment is performed at the reporting unit level, which is based primarily on our geographical regions, consistent with the reporting units used in testing for goodwill impairment. Based on the impairment tests performed, the Company determined there were impairments of long-lived assets in 2008 resulting in impairment charges as further discussed in Note 4. There was no impairment of long-lived assets in 2010 and 2009.

(l) Income Taxes

Income taxes are accounted for under the asset and liability method. Under the asset and liability method, deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. This method also requires the recognition of future tax benefits for net operating loss ("NOL") carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized as income in the period that includes the enactment date. A valuation allowance is provided against deferred tax assets to the extent their realization is not more likely than not. The tax provision allocated to discontinued operations is based on the incremental tax effect after computing the tax provision on continuing operations. Uncertain tax positions and the related interest and penalties are provided for based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities.

(m) Revenue Recognition

Products revenue consists of hardware and software purchased from other parties and resold to a customer. Products revenue also includes revenue from hardware maintenance contracts, hardware installation, support and training services that are provided solely by third parties who are the primary obligor of these services under the customer contract.

Services revenue consists of professional services and managed services. Professional services include the planning, design, and implementation of the products and solutions that we provide. Managed services include remote monitoring and management of enterprise organizations' network infrastructure, data center, wireless network and security technology, and remote disaster recovery hosting. Services revenue also includes hardware maintenance contracts for which the Company is the primary obligor.

The Company recognizes revenue when persuasive evidence of a sale arrangement exists, delivery has occurred or services have been rendered, the sales price is fixed or determinable, and collectability is reasonably assured. The majority of its sales relate to physical products that are recognized when title and risk of loss to the products sold passes to the customer. Based on our standard shipping terms, title generally passes upon shipment of the product either by a vendor directly to the customer or by the Company to the customer. If the customer's contract states the title passes upon receipt by the customer, revenue is not recognized until confirmation of delivery is received. Products revenue from services provided to customers by third parties are recorded on a net basis and recognized as revenue upon contracting with the third party service provider. Amounts billed to customers for shipping and handling are classified as revenue.

The Company resells certain third party software which does not require significant production, modification or customization. Such software is recognized when persuasive evidence of a sale arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collectability is reasonably assured.

Revenue for fixed and flat fee services contracts related to customized network and IP telephony solutions are generally recognized under a proportional performance model utilizing an input based approach (labor hours). Other service revenue is earned from providing stand-alone services such as billings for engineering and technician time, installation and programming services, which are provided on an hourly basis. Other service revenues are recognized when the service is performed and when collection is reasonably assured.

Managed services revenue includes remote monitoring and management of enterprise organizations' network infrastructure, data center, wireless network and security technology, remote disaster recovery hosting, and hardware maintenance contracts for which the Company is the primary obligor. Contracts under this revenue category are recognized ratably over the term of the underlying customer contract. Commission costs and third party support contracts paid in advance are deferred and recognized ratably over the term of the underlying customer contract.

When an arrangement contains multiple deliverables, such as more than one product item or a combination of products and one or more types of services, the Company determines whether the delivered items can be considered separate units of accounting as prescribed under multiple-element arrangement accounting guidance. Such guidance states that delivered items should be considered separate units of accounting if delivered items have value to the customer on a standalone basis, there is objective and reliable evidence of the fair value of undelivered items, and if delivery of undelivered items is probable and substantially in the Company's control. Contracts entered into with customers, whether containing only product, only services, or a combination of products and services, are considered a single arrangement as are multiple contracts which were entered into separately but which were negotiated as a package.

If objective and reliable evidence exists for the fair value of all items in a multiple element arrangement, revenue is recognized based on the relative fair value of the separate elements. When there is objective and reliable evidence for the fair values of undelivered items but no such evidence exists for the items already delivered, the amount of revenue allocated to the delivered items is computed using the residual method. The Company has vendor-specific objective evidence ("VSOE") of fair value for product and professional service deliverables and it does not have VSOE of fair value for managed services deliverables. Because the Company does not have the ability to establish the fair value of managed services deliverables, multiple element arrangements that contain managed services are recognized ratably over the initial term of the managed services contract that is part of the arrangement because managed services are always the last element to be delivered in the arrangement. The costs of products and services and commission costs directly related to multiple element arrangements containing managed services are deferred and recognized ratably over the initial term of the managed services contract.

Contracts and customer purchase orders are generally used to determine the existence of an arrangement. Shipping documents and customer acceptance, when applicable, are used to verify delivery. If a customer contract contains unusual technical objective performance criteria to be met prior to customer acceptance that the Company cannot be certain of achieving, then revenue recognition is deferred until acceptance is obtained. Determination that the fee is fixed or determinable is based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. Accruals for estimated sales returns and other allowances and deferrals are recorded as a reduction of revenue at the time of revenue recognition. These provisions are based on contract terms and prior claims experience and involve significant estimates. If these estimates are significantly different from actual results, the Company's revenue could be impacted. The Company collects and remits sales and property taxes on products and services that it purchases and sells under its contracts with customers, and reports such amounts under the net method in its consolidated statements of operations.

On an arrangement basis, the Company recognizes deferred revenue to the extent cash is received in excess of revenue recognized. The Company does not recognize accounts receivable for amounts invoiced to customers in excess of revenue recognized to-date. As of December 31, 2010, 2009, and 2008, the Company invoiced customers \$701, \$429 and \$342 in excess of the revenue recognized, respectively. These amounts are not reflected in accounts receivable and deferred revenue as of December 31, 2010, 2009 and 2008.

Credit and collections policy is the basis for the determination of the collectability of amounts due from customers, which requires the Company to use estimates and exercise judgment. It routinely monitors the customer's payment history and current credit worthiness to determine that collectability is reasonably assured and then, in some instances, require letters of credit in support of contracted amounts. This requires the Company to make frequent judgments and estimates in order to determine the appropriate period to recognize a sale to a customer and the amount of valuation allowances required for doubtful accounts. Provisions for doubtful accounts are recorded when it becomes evident that the customer will not be able to make the required payments either at contractual due dates or in the future. Changes in the financial condition of customers, either adverse or positive, could impact the amount and timing of any additional provision for doubtful accounts that may be required.

In February 2009, the Company entered into a \$2,400 contract with a state department of transportation to provide broadband wireless services to passengers on a local train system. The contract provided for the Company to be paid upon completion of specified milestones and included a twenty percent retainage provision. One half of the retainage is payable upon determination by the customer that the broadband wireless services are fully operational and the remaining one half of the retainage is payable upon acceptance of the system by the customer. In accordance with the contract terms, acceptance of the system will be based on demonstration of system performance requirements as set forth in the contract during a three month system acceptance test period to start once the system is available for use covering the entire travel route. Due to the unique contract requirements and the acceptance criteria, the Company accounts for this contract using the completed contract method. All revenue earned and related costs will be recognized upon final acceptance of the system, currently expected to occur in 2011. The contract amount less the final retainage payment of approximately \$240 has been received. The Company expects to incur a loss of \$127 on this contract, which was accrued as of December 31, 2009.

Reported under the caption deferred revenue in the respective balance sheets are the following amounts of billings in excess of costs incurred:

	<b>December 31, 2010</b>	<b>December 31, 2009</b>
Billings to-date	\$ 2,373	\$ 2,325
Less costs incurred to-date	(2,373)	(2,187)
Billings in excess of costs incurred	<u>\$ —</u>	<u>\$ 138</u>

(n) Vendor Incentives

The Company participates in vendor incentive programs under which incentives are principally earned by sales volume, sales growth and customer satisfaction levels. The amounts earned under these programs are accrued when they are deemed probable and can be reasonably measured; otherwise, they are recorded at the earlier of when they are declared by the vendor or the cash is received. As a result of these estimates, the amount of rebates declared by the vendor, or the amount of rebates received in cash, the effect of vendor incentives on cost of goods can vary significantly between quarterly and annual reporting periods. The incentives are recorded as a reduction of cost of goods and services. The Company recognized vendor incentives of \$18,169, \$13,345 and \$10,118 in 2010, 2009 and 2008, respectively. Accounts receivable from vendors of \$6,068, \$4,820 and \$3,186 at December 31, 2010, 2009 and 2008, respectively, are reported under "Accounts receivable" on the consolidated balance sheets.

(o) Advertising Costs

Advertising costs generally consist of print advertising and trade show materials and are expensed as incurred. Advertising expense was \$80, \$64, and \$20 in 2010, 2009, and 2008, respectively.

(p) Research and Development Costs

Research and development expenditures are charged to operations as incurred and consist primarily of outside software development services. The Company incurred research and development expenditures of \$70, \$26, and \$11 in 2010, 2009 and 2008, respectively.

(q) Share-Based Compensation

Stock-based compensation expense is measured at the grant date based on the fair value of the award, and the cost is recognized as expense ratably over the award's vesting period. The Company uses the Black-Scholes-Merton option-pricing model to estimate the fair value of these awards. The model requires the Company to make significant judgments regarding the assumptions used within the model, the most significant of which are the stock price volatility assumption, the expected life of the award, the risk-free rate of return and dividends during the expected term. The Company estimates expected forfeitures of stock-based awards at the grant date and recognizes compensation cost only for those awards expected to vest. The forfeiture assumption is ultimately adjusted to the actual forfeiture rate. Therefore, changes in the forfeiture assumptions may affect the timing of the total amount of expense recognized over the vesting period. Estimated forfeitures are reassessed in each reporting period and may change based on new facts and circumstances.

(r) Earnings Per Share

Basic EPS is calculated by dividing net income (loss) by the weighted-average number of common shares outstanding for the period. Diluted EPS is calculated using the weighted-average number of shares outstanding for the period and dilutive common share equivalents (using the treasury stock method) outstanding during the period. The following table reconciles the basic to diluted weighted average shares outstanding:

	Year Ended December 31,		
	2010	2009	2008, As restated
Net income (loss) from continuing operations	\$ 5,353	\$ (4,295)	\$ (12,785)
Income (loss) from discontinued operations	—	(90)	37
Net income (loss)	\$ 5,353	\$ (4,385)	\$ (12,748)
Weighted-average shares outstanding- basic	9,263,841	8,830,228	8,133,165
Dilutive effect of common share equivalents	637,382	—	—
Weighted-average shares outstanding- diluted	9,901,223	8,830,228	8,133,165

The following table presents the number of shares of common stock that were excluded in the calculation of diluted earnings per share since their effect would have been anti-dilutive.

	Year Ended December 31,		
	2010	2009	2008
Warrants	40,000	40,000	11,896
Stock options	530,888	561,818	558,347
Contingent shares	—	94,173	—
Restricted stock	—	478,897	—
Weighted-average shares considered anti-dilutive	570,888	1,174,888	570,243

(s) Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, accounts receivable and accounts payable for which the carrying values approximate fair values given the short-term maturity of the instruments. The carrying value of the Company's debt instruments approximate their fair value based on estimates of rates offered to the Company for instruments with the same maturity dates and security structures.

(t) Recent Accounting Pronouncements

In December 2010, the Financial Accounting Standards Board ("FASB") clarified required disclosures regarding pro forma revenue and earnings in a business combination. If comparative financial statements of an acquired business are presented, the revenue and earnings of the combined entity should be presented as though the business combination had occurred at the beginning of the prior reporting period only. In addition, the supplemental disclosures should include a description of the amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the pro forma revenue and earnings. The clarification is required to be applied to any business combination of the Company that closes after 2010 and early adoption is permitted. The Company will adopt the requirement for any business combination that closes after December 31, 2010.

In December 2010, the FASB clarified certain aspects of "carrying value" in applying step 1 of the goodwill impairment test to a reporting unit. The revised guidance does not prescribe a specific method of calculating the carrying value of a reporting unit, but it does require reporting units with negative or zero carrying value to be assessed for impairment using qualitative factors. If the qualitative factors indicate that it is more likely than not that impairment of goodwill exists, then step 2 of the goodwill impairment test must be performed. The new requirement is effective for years beginning after December 15, 2010 and early adoption is not permitted. Companies affected by this new standard are required to record a cumulative effect adjustment to beginning retained earnings in the period of adoption. The new standard is not expected to have a material effect on the Company because none of the Company's reporting units with goodwill balances at December 31, 2010, have a negative or zero carrying value.

In July 2010, the FASB adopted enhanced disclosure requirements regarding financing receivables and allowance for credit losses, excluding short-term trade receivables or receivables measured at fair value or lower of cost or fair value. The enhanced disclosure requirements include information about the nature and credit risk inherent in the entity's financing receivables, the Company's methods of analyzing and assessing credit risk in determining the allowance for credit losses and the changes and reasons for changes in the allowance for credit losses. The enhanced disclosure requirements are required to be adopted by the Company in its annual report for the year ended December 31, 2010. The Company's financing receivables are currently short-term trade receivables which are excluded from such disclosures. The additional disclosure requirements will not have an impact on the Company's results of operations or financial position.

In January 2010, the FASB enhanced existing requirements and added new requirements for disclosures of fair value measurements. Previous guidance required companies to disclose information about how management determined fair value for those assets and liabilities measured at fair value by categorizing such assets and liabilities in one of three categories: Level 1, Level 2 or Level 3. The new requirements enhance and amend these disclosures. Some of the new disclosures were required to be adopted, and were adopted by the Company in the first quarter ended March 31, 2010, with the remaining disclosures required to be adopted by the Company in the first quarter ended March 31, 2011. The additional disclosure requirements will not have an impact on the Company's results of operations or financial position.

In October 2009, the Financial Accounting Standards Board ("FASB") issued "Multiple-Deliverable Revenue Arrangements", amending guidance to require an entity to use an estimated selling price when vendor specific objective evidence or acceptable third party evidence does not exist for any products or services included in a multiple element arrangement. The arrangement consideration should be allocated among the products and services based upon their relative selling prices, thus eliminating the use of the residual method of allocation. Expanded qualitative and quantitative disclosures regarding significant judgments made and changes in applying this guidance are required. This guidance is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption and retrospective application are also permitted. The Company will adopt this guidance prospectively on January 1, 2011, and is currently evaluating the financial statement impact, although it does not expect the implementation of this standard to have a material impact on the results of operations or financial position.

In October 2009, the FASB issued "Certain Revenue Arrangements That Include Software Elements", amending guidance to exclude tangible products containing software components and non-software components that function together to deliver the product's essential functionality. Entities that sell joint hardware and software products that meet this scope exception will be required to follow this guidance, effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption and retrospective application are also permitted. The Company will adopt this guidance prospectively on January 1, 2011, and is currently evaluating the financial statement impact, although it does not expect the implementation of this standard to have a material impact on the results of operations or financial position.

## **2. Restatement of Previously Issued Financial Statements**

As previously disclosed in the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission ("SEC") on March 26, 2010, the Company announced that it was delaying its fourth quarter earnings release (for the year ended December 31, 2009) and that it would not file its Annual Report on Form 10-K for the fiscal year 2009 by its due date in order to allow the Company additional time for the reexamination of its revenue recognition under Accounting Standards Codification (ASC) 605-25, Revenue Recognition, Multiple-Element Arrangement, previously referred to as Emerging Issues Task Force No. 00-21 ("EITF 00-21"), "Revenue Arrangements with Multiple Deliverables".

In the Company's Current Report on Form 8-K filed with the SEC on June 21, 2010, the Company announced that the Audit Committee of its Board of Directors, upon the recommendation of management, had determined that its previously issued financial statements included in its Annual Report on Form 10-K/A for the fiscal year ended December 31, 2008, its Quarterly Report for the quarter ended March 31, 2009 on Form 10-Q/A and for the quarters ended June 30, 2009 and September 30, 2009 on Form 10-Q, should no longer be relied upon as a result of certain errors affecting the timing of recognition of revenues and costs of revenues.

The restated financial statements correct the following errors in the recognition of revenue associated with the proper:

1. Application of EITF 00-21, affecting the timing and presentation of revenue recognized (“00-21 Adjustments”) for the:
  - a. Proper determination of contracts to which EITF 00-21 was applicable and the related units of accounting for such contracts,
  - b. Proper determination of linkage between contracts, reflecting aggregation of single contracts into multiple element arrangements since they were negotiated as a package, and
  - c. Proper assessment of whether or not the Company had vendor specific objective evidence (“VSOE”) of the fair value of the various deliverables within arrangements containing multiple deliverables, as well as (i) the timing of revenue recognition based upon the relative fair value of the deliverables within the arrangement for deliverables for which the Company is able to establish the fair value. (ii) the allocation of the total arrangement consideration between the various elements of the arrangement based upon the relative fair value of the deliverables within the arrangement for multi-element arrangements, and, (iii) the deferral of revenue for the entire arrangement in situations where the arrangement contained remaining undelivered deliverables for which the Company is not able to establish the fair value.
2. Identification of customer contracts with special customer acceptance terms which require deferral of revenues and related costs of revenues and commissions until customer acceptance was obtained (“Special Acceptance Terms”),
3. Identification of contract shipping terms resulting in the incorrect timing of recognition of revenues and related costs of sales and commissions (“Shipping Terms”), and
4. Identification of products that are maintenance, support, and installation services provided by third parties as the primary obligor of the service, which requires presentation of the revenue reported by the Company net of the cost of the services provided by the third party (“Net Presentation”).

In addition, the Company also determined that an error was made in the accounting for contingent consideration (“earn-out”) paid in August 2006 in connection with the acquisition of substantially all of the assets of InfoGroup Northwest, Inc. (“InfoGroup”). The InfoGroup assets were acquired under an asset purchase agreement in June 2005 and most InfoGroup employees became employees of the Company. As part of the earn-out provision, cash and common stock were paid by the Company to the InfoGroup shareholder based upon the InfoGroup branch offices achieving specific financial performance targets, which were recorded as goodwill. The selling shareholder decided to give a portion of the earn-out to former employees of InfoGroup who had become employees of the Company as a result of the acquisition (“Employee Payments”). Under GAAP, including guidance promulgated by the SEC, actions of economic interest holders in a company may be imputed to the company itself. When a selling shareholder gives acquisition-related payments to Company employees who were not selling shareholders, these payments are viewed as resulting from services that are assumed to have benefited the Company and therefore must be further recorded as a non-cash charge to compensation expense. In effect, the Employee Payments are in substance a separate transaction from the Company’s acquisition of the InfoGroup assets, which should have been recorded as a separate non-cash charge to compensation expense. The Employee Payments were therefore required to be reflected in the consolidated financial statements for the year ended December 31, 2006 as non-cash compensation expense in the amount of \$672, and the selling shareholder was deemed to have made a corresponding capital contribution to the Company. The compensation expense is a non-cash charge because the payments were made directly by the selling shareholder from the acquisition proceeds received from the Company. The Company did not expend additional cash with respect to the compensation charge. The correction had no effect on total stockholders’ equity at December 31, 2006.

**The Restated Stockholders’ Equity section of the Consolidated Balance Sheet as of December 31, 2007 presenting the cumulative effect of the revenue corrections and error in accounting for contingent consideration, is as follows:**

	As Previously Reported	Total Revenue Corrections	Goodwill Correction	As Restated
Stockholders’ equity:				
Common stock	\$ 75	\$ —	\$ —	\$ 75
Additional paid-in capital	36,497	(33)	672	37,136
Accumulated deficit	(4,545)	(31)	(672)	(5,248)
Total stockholders’ equity	<u>\$ 32,027</u>	<u>\$ (64)</u>	<u>\$ —</u>	<u>\$ 31,963</u>

The Restated Consolidated Balance Sheet as of December 31, 2008, is as follows:

	As Previously Reported	Total Revenue Corrections	Goodwill Correction	As Restated
<b>Current assets:</b>				
Cash and cash equivalents	\$ 10,937	\$ —	\$ —	\$ 10,937
Accounts receivable, net	52,866	(1,172)	—	51,694
Inventory, net	2,406	1,204	—	3,610
Deferred costs	216	136	—	352
Other current assets	1,059	—	—	1,059
Total current assets	67,484	168	—	67,652
Property and equipment, net	5,207	—	—	5,207
Goodwill	12,882	—	—	12,882
Intangible and other assets, net	1,721	—	—	1,721
Total assets	<u>\$ 87,294</u>	<u>\$ 168</u>	<u>\$ —</u>	<u>\$ 87,462</u>
<b>Current liabilities:</b>				
Current portion of capital lease obligations	\$ 77	\$ —	\$ —	\$ 77
Accounts payable floor plan	40,002	—	—	40,002
Accounts payable	5,170	—	—	5,170
Accrued payroll and related costs	4,258	8	—	4,266
Accrued expenses	2,641	—	—	2,641
Deferred revenue	744	280	—	1,024
Other current liabilities	419	—	—	419
Total current liabilities	53,311	288	—	53,599
<b>Non-current liabilities:</b>				
Non-current portion of capital lease obligations	163	—	—	163
Other liabilities	250	—	—	250
Total liabilities	<u>53,724</u>	<u>288</u>	<u>—</u>	<u>54,012</u>
<b>Stockholders' equity:</b>				
Common stock	87	—	—	87
Additional paid-in capital	50,742	(55)	672	51,359
Accumulated deficit	(17,259)	(65)	(672)	(17,996)
Total stockholders' equity	<u>33,570</u>	<u>(120)</u>	<u>—</u>	<u>33,450</u>
Total liabilities and stockholders' equity	<u>\$ 87,294</u>	<u>\$ 168</u>	<u>\$ —</u>	<u>\$ 87,462</u>

The Restated Consolidated Statement of Operations for the year ended December 31, 2008, is as follows:

	As Previously Reported	Total Revenue Corrections	As Restated
Revenue:			
Products	\$ 213,125	\$ (2,988)	\$ 210,137
Services	46,032	151	46,183
Total revenue	<u>259,157</u>	<u>(2,837)</u>	<u>256,320</u>
Cost of products and services:			
Products	175,244	(2,701)	172,543
Services	32,782	(8)	32,774
Total cost of products and services	<u>208,026</u>	<u>(2,709)</u>	<u>205,317</u>
Gross profit	51,131	(128)	51,003
Selling, general and administrative expenses	48,784	(44)	48,740
Impairment charge	13,071	—	13,071
Operating loss	(10,724)	(84)	(10,808)
Interest expense	(330)	—	(330)
Interest income	357	—	357
Other expense, net	(43)	—	(43)
Loss from continuing operations before income taxes	(10,740)	(84)	(10,824)
Income tax expense (benefit)	2,011	(50)	1,961
Net loss from continuing operations	(12,751)	(34)	(12,785)
Income from discontinued operations, net of taxes	37	—	37
Net loss	<u>\$ (12,714)</u>	<u>\$ (34)</u>	<u>\$ (12,748)</u>
Net loss per share:			
Net loss per share, basic:			
Net loss from continuing operations	\$ (1.56)		\$ (1.57)
Income from discontinued operations, net of taxes	—		—
Net loss per share	<u>\$ (1.56)</u>		<u>\$ (1.57)</u>
Net loss per share, diluted:			
Net loss from continuing operations	\$ (1.56)		\$ (1.57)
Income from discontinued operations, net of taxes	—		—
Net loss per share	<u>\$ (1.56)</u>		<u>\$ (1.57)</u>
Weighted average shares – basic	<u>8,133,165</u>		<u>8,133,165</u>
Weighted average shares - diluted	<u>8,133,165</u>		<u>8,133,165</u>

A summary of the effect of the revenue errors by type of revenue error on the Consolidated Statement of Operations for the year ended December 31, 2008, is as follows:

	00-21 Adjustments	Special Acceptance Terms	Shipping Terms	Net Presentation	Total Revenue Corrections
Revenue:					
Products	\$ (80)	\$ —	\$ (770)	\$ (2,138)	\$ (2,988)
Services	151	—	—	—	151
Total revenue	71	—	(770)	(2,138)	(2,837)
Cost of products and services:					
Products	160	—	(723)	(2,138)	(2,701)
Services	(25)	—	17	—	(8)
Total cost of products and services	135	—	(706)	(2,138)	(2,709)
Gross Profit:					
Products	(240)	—	(47)	—	(287)
Services	176	—	(17)	—	159
Total gross profit (loss)	(64)	—	(64)	—	(128)
Selling, general and administrative expenses					
	(36)	—	(8)	—	(44)
Operating income (loss)	(28)	—	(56)	—	(84)
Income tax expense (benefit)	(35)	—	(15)	—	(50)
Net income (loss) from continuing operations	\$ 7	\$ —	\$ (41)	\$ —	\$ (34)

The Restated Consolidated Statement of Cash Flows for the year ended December 31, 2008, is as follows:

	As Previously Reported	Total Revenue Corrections	As Restated
Cash flows from operating activities:			
Net income (loss)	\$ (12,714)	\$ (34)	\$ (12,748)
Adjustments to reconcile net income (loss) to net cash provided			
by (used in) operating activities:			
(Income) loss from discontinued operations, net of tax	(37)	-	(37)
Depreciation and amortization	2,667	-	2,667
Share-based compensation expense	1,731	-	1,731
Impairment charges	13,071	-	13,071
Adjustment to estimated acquisition contingent consideration	-	-	-
Excess tax benefits from stock option exercises	(1,107)	22	(1,085)
Provision for doubtful accounts	541	-	541
Deferred income tax	535	(28)	507
Loss on disposal of property and equipment	43	-	43
Changes in assets and liabilities:			
Accounts receivable, net	(8,279)	889	(7,390)
Inventory	(953)	(843)	(1,796)
Accounts payable	456	-	456
Accrued expenses	1,437	(24)	1,413
Other assets and liabilities	1,400	40	1,440
Net cash (used in) provided by operating activities	<u>(1,209)</u>	<u>22</u>	<u>(1,187)</u>
Cash flows from investing activities:			
Purchases of property and equipment	(2,260)	-	(2,260)
Acquisition of NetTek Technology Consultants, Inc.	(1,440)	-	(1,440)
Acquisition of Access Flow, Inc.	(2,550)	-	(2,550)
Acquisition of AdvancedNetworX, Inc.	-	-	-
Acquisition of Marketware Inc.	-	-	-
Acquisition of Select, Inc.	153	-	153
Proceeds from sale of property and equipment	1	-	1
Transaction costs paid for acquisitions	(225)	-	(225)
Net cash used in investing activities	<u>(6,321)</u>	<u>-</u>	<u>(6,321)</u>
Cash flows from financing activities:			
Borrowings under non-interest bearing floor plan financing, net	7,530	-	7,530
Excess tax benefits from stock option exercises	1,107	(22)	1,085
Proceeds from shares issued under Employee Stock Purchase Plan	344	-	344
Payments on other borrowings	(601)	-	(601)
Purchase of stock resulting from grantee election	(61)	-	(61)
Proceeds from exercise of stock options	831	-	831
Proceeds from issuance of common stock	8,751	-	8,751
Payments on borrowings under acquisition credit facility	(6,000)	-	(6,000)
Purchase of common stock	(3,234)	-	(3,234)
Proceeds from other borrowings	460	-	460
Net cash provided by financing activities	<u>9,127</u>	<u>(22)</u>	<u>9,105</u>
Net increase in cash and cash equivalents	1,597	-	1,597
Cash and cash equivalents at beginning of period	9,340	-	9,340
Cash and cash equivalents at end of period	<u>\$ 10,937</u>	<u>\$ -</u>	<u>\$ 10,937</u>

### 3. Acquisitions

The Company completed two acquisitions in 2009 and three acquisitions in 2008. The acquisitions were undertaken to improve the Company's geographic presence and enhance its technical capabilities. The 2009 acquisitions were accounted in accordance with the provisions of ASC 805 Business Combinations, which provides among other things, that contingent consideration be estimated and recognized at the time of acquisition.

#### (a) Marketware Inc.

On December 31, 2009, the Company purchased the operations and certain assets, and assumed specified liabilities of Marketware Inc. ("Marketware"). Marketware, a Sacramento-based provider of Cisco IP-network-based physical security and networking solutions founded in 1982, generated revenue of approximately \$5,400 for the 12 months ended December 31, 2009. The acquisition initially added ten employees as part of an expanded Northern California region.

Consideration paid at closing consisted of (a) \$350 in cash, (b) reimbursed inventory commitments of \$60, (c) liabilities assumed of \$28, (d) stock options granted to the seller valued at \$23, (e) state sales taxes incurred in the transaction of \$7, and (f) a noncompete agreement payment to the seller of \$1. Cash of \$35 was initially retained by the Company under defined holdback provisions and was subsequently paid. Transaction costs of \$21 were charged as incurred to selling, general and administrative expenses. Additional purchase consideration may be payable based on the Northern California region's operating income contribution during the two years subsequent to the acquisition date. For the one year period ending December 31, 2010, the operating profit contribution did not meet the minimum requirement resulting in no additional purchase consideration due. For the twelve-month period ending December 31, 2011, a minimum of zero and a maximum of \$1,313 additional purchase price consideration can be earned, of which up to 50% may be paid in the form of common stock, at the Company's option.

Estimated additional purchase consideration payable was recorded at fair value on the acquisition date in the amount of \$825 and classified as other non-current liabilities as of December 31, 2009. As of December 31, 2010, the estimated additional purchase consideration for both one-year periods ending December 31, 2011 and December 31, 2010 was revised to \$0, resulting in a reduction in selling, general and administrative expenses of \$825. The estimated additional consideration will be remeasured to fair value at each reporting date until settled.

#### (b) AdvancedNetworX, Inc.

On July 17, 2009, the Company purchased the operations and certain assets, and assumed specified liabilities of AdvancedNetworX, Inc. ("ANX"). ANX, a Raleigh, North Carolina-based network consulting organization founded in September 2007, generated revenue of approximately \$1,700 for the 12 months ended June 30, 2009. The acquisition will create a presence for INX in the Mid Atlantic region.

Consideration at closing totaled \$665, consisting of: (a) \$465 in cash, (b) \$156 in assumed liabilities under customer contracts, (c) \$34 in capital lease obligations assumed and (d) 2,000 shares of the Company's common shares valued at \$5.08 per share for a total of \$10. The shares were initially held in escrow under holdback provisions as defined in the acquisition agreement and were subsequently issued. Transaction costs of \$16 were charged as incurred to selling, general and administrative expenses.

Additional purchase consideration of between zero and \$700 per year is payable based on ANX's branch office operating income contribution during each of the one-year periods ending July 31, 2010, 2011 and 2012. Up to 60% of such additional purchase price may be paid in the form of Common Stock, at the Company's option. For the one year period ending July 31, 2010, the operating profit contribution was less than the minimum required resulting in no additional purchase consideration due.

Estimated additional purchase consideration payable was recorded at fair value on the acquisition date in the amount of \$477. The estimated additional consideration was remeasured as of December 31, 2010 and 2009 based on revised operating income forecasts, resulting in reduced selling, general, and administrative expense of \$453 in 2010 and increased selling, general, and administrative expense of \$109 in 2009. The estimated additional purchase consideration payable of \$11 and \$254 are classified as accrued expenses and \$122 and \$332 are classified as other non-current liabilities as of December 31, 2010 and 2009, respectively, based on when the amounts are expected to be earned. The estimated additional consideration will be remeasured to fair value at each reporting date until settled.

#### (c) NetTeks Technology Consultants, Inc.

On November 14, 2008, the Company purchased the operations and certain assets, and assumed specified liabilities of NetTeks Technology Consultants, Inc. ("NetTeks"). NetTeks is a Boston, Massachusetts-based network consulting organization with offices in downtown Boston and Glastonbury, Connecticut, with revenues for the twelve months ended September 30, 2008 of approximately \$12,700.

Consideration paid at closing consisted of \$1,350 in cash and 30,770 shares of the Company's common stock, of which 15,385 shares were held in escrow under holdback provisions as defined in the acquisition agreement. Additional purchase price consideration of \$1,500 was paid in cash to NetTeks for exceeding the New England region operating income contribution target for the six month period ending December 31, 2009. Additional purchase price consideration of \$1,700 was earned by NetTeks for exceeding the New England region operating income contribution target for the year ending December 31, 2010. The additional consideration was paid in April 2011, consisting of a cash payment of \$850 and the issuance of 113,182 shares of the Company's common stock with a value of \$850. The additional purchase price consideration was accounted for as goodwill.

(d) VocalMash

On December 4, 2008, the Company purchased the operations of VocalMash, a business owned and operated by the Company's Vice President of Sales. VocalMash is an application integration company that utilizes Web 2.0 technologies to integrate unified communications systems with other enterprise applications.

Consideration paid at closing consisted of 60,000 shares of the Company's common stock valued at \$4.89 per share for a total of \$293. Additional purchase consideration of up to a maximum of \$380 was payable if certain operating income contribution targets were achieved for 2009. Such targets were not achieved and no additional purchase consideration is due.

(e) Access Flow, Inc.

On June 6, 2008, the Company purchased the operations and certain assets, and assumed specified liabilities of Access Flow, Inc. ("AF"). AF is a Sacramento, California-based consulting organization focused on delivering VMware-based data center virtualization solutions, with revenues for the twelve months ended March 31, 2008 of approximately \$10,500. Consideration paid at closing consisted of \$2,450 in cash and 262,692 shares of the Company's common stock, of which 24,000 shares were placed in escrow under holdback provisions as defined in the acquisition agreement. During the quarter ended September 30, 2009, these shares were released to AF less 3,359 shares representing \$34 for costs reimbursable to the company under the escrow provisions. The 3,359 shares returned from escrow were retired. Upon the release of the remaining shares in escrow to AF, 1,032 shares in Company common stock representing \$14 were issued to the broker of the transaction. The two shareholders of AF entered into five-year non-compete agreements at closing, which provide for payments to each in the aggregate amount of \$50 in equal monthly installments of approximately \$8 each per month over the six month period subsequent to closing.

Additional purchase price consideration valued at \$497 and \$377 was earned by AF for the achievement of certain customer billing milestones during the twelve-month periods ending June 30, 2010 and 2009, respectively. The 2010 consideration consisted of a cash payment of \$248 and the issuance of 50,525 shares of the Company's common stock with a value of \$249. In addition, cash of \$25 was paid to the broker of the transaction.

The 2009 consideration consisted of a cash payment of \$182 and issuance of 29,435 shares of the Company's common stock with a value of \$195. In addition, cash of \$9 and 1,472 shares valued at \$10 were paid to the broker of the transaction. The Company recognized goodwill for the additional purchase price consideration and broker's fee.

(f) Network Architects, Corp.

Effective May 26, 2005, the Company acquired the operations and certain assets of Network Architects, Corp. ("Network Architects"), a data network and IP telephony systems design, installation and support business with branches in Albuquerque, New Mexico, and El Paso, Texas. Additional purchase price consideration consisting of 75,000 shares of the Company's common stock was issued to Network Architects in July 2008 for achievement of certain operating profit milestones during the twelve-month period ending May 31, 2008. The additional purchase price consideration was valued at \$741 and was recorded as additional goodwill.

(g) Acquisitions Summary

The following table summarizes the estimated fair values, including professional fees and other related acquisition costs, at the closing date for 2009 and 2008 acquisitions, including additional purchase price consideration subsequently paid. There were no acquisitions in 2010.

	<u>Marketware</u>	<u>ANX</u>	<u>VocalMash</u>	<u>NetTeks</u>	<u>AF</u>
Allocated acquisition cost:					
Intangible assets	\$ 491	\$ 299	\$ 7	\$ 1,296	\$ 1,483
Inventory	9	—	—	9	5
Property and equipment	79	59	—	134	696
Other assets	50	—	—	—	—
Goodwill	665	784	286	3,418	5,363
Current portion of capital lease obligations	—	(15)	—	—	(96)
Accrued expenses	(7)	—	—	(1,703)	(49)
Deferred revenue	(5)	(156)	—	—	—
Other current liabilities	(17)	—	—	—	—
Long-term portion of capital lease obligations	—	(19)	—	—	(176)
Other long-term liabilities	(831)	(477)	—	—	—
Net assets acquired	<u>\$ 434</u>	<u>\$ 475</u>	<u>\$ 293</u>	<u>\$ 3,154</u>	<u>\$ 7,226</u>
Amount of goodwill deductible for U.S. Federal income tax purposes					
	<u>\$ —</u>	<u>\$ 39</u>	<u>\$ 286</u>	<u>\$ 3,418</u>	<u>\$ 5,363</u>

Certain amounts of the goodwill, acquired intangible assets, and property and equipment were determined to be impaired during the fourth quarters of 2010, 2009 and 2008 as discussed in Note 4.

(h) Pro Forma Summary (Unaudited)

The following pro forma consolidated amounts give effect to the Company's 2009 acquisition of ANX and Marketware as if they had occurred January 1, 2008. The pro forma consolidated amounts are not necessarily indicative of the operating results that would have been achieved had the transaction been in effect and should not be construed as being representative of future operating results.

	Year Ended December 31,	
	2009	2008, As Restated
Revenues	\$ 234,022	\$ 285,260
Net loss	\$ (5,089)	\$ (13,823)
Net loss per share:		
Basic	\$ (0.58)	\$ (1.68)
Diluted	\$ (0.58)	\$ (1.68)
Weighted average shares used in calculation:		
Basic	8,830,228	8,217,756
Diluted	8,830,228	8,217,756

The following pro forma consolidated amounts give effect to the Company's 2008 acquisition of AF, NetTeks, and VocalMash as if they had occurred January 1, 2008. The pro forma consolidated amounts are not necessarily indicative of the operating results that would have been achieved had the transaction been in effect and should not be construed as being representative of future operating results.

	Year Ended December 31, 2008, As Restated
Revenues	\$ 272,421
Net loss	\$ (12,209)
Net loss per share - Basic	
	\$ (1.49)
Net loss per share - Diluted	
	\$ (1.49)
Weighted average shares - Basic	
	8,215,756
Weighted average shares - Diluted	
	8,215,756

(i) Noncash Investing and Financing Activities Relating to Acquisitions

The Company's noncash investing and financing activities relating to acquisitions are as follows:

	2010	2009	2008
<b>Acquisition of Access Flow, Inc.:</b>			
Fair value of assets acquired	\$ 522	\$ 394	\$ 6,631
Common stock issued	(249)	(185)	(3,586)
Capital lease obligation assumed	—	—	(272)
Transaction costs accrued	—	—	(16)
<b>Acquisition of NetTeks Technology Consultants, Inc.:</b>			
Fair value of assets acquired	1,700	1,500	1,654
Common stock issued	—	—	(163)
Estimated contingent consideration accrued	(1,700)	(1,500)	—
<b>Acquisition of AdvancedNetworX, Inc.:</b>			
Fair value of assets acquired	—	1,142	—
Common stock issued	—	(10)	—
Liabilities assumed	—	(190)	—
Estimated contingent consideration accrued	—	(477)	—
<b>Acquisition of Marketware Inc.:</b>			
Fair value of assets acquired	—	1,294	—
Common stock options granted	—	(23)	—
Liabilities assumed	—	(35)	—
Estimated contingent consideration accrued	—	(825)	—
<b>Acquisition of Network Architects, Corp.:</b>			
Fair value of assets acquired	—	—	741
Common stock issued	—	—	(741)
<b>Acquisition of VocalMash:</b>			
Fair value of assets acquired	—	—	293
Common stock issued	—	—	(293)

(j) Post Acquisition Revenues and Earnings

Revenues and operating income (loss) for acquired businesses during the period from the acquisition closing date to the end of the year in which it was acquired, were as follows:

	Year Acquired	Acquisition Closing Date	Total Revenues	Operating Income (Loss)
Marketware	2009	December 31, 2009	\$ —	\$ —
ANX	2009	July 17, 2009	1,443	(282)
VocalMash	2008	December 4, 2008	—	(3)
NetTeks	2008	November 14, 2008	850	80
AF	2008	June 6, 2008	3,631	(2,025)

#### 4. Goodwill, Purchased Intangibles, and Impairment Charges

##### (a) Goodwill

The changes in the carrying value of goodwill during 2010, 2009 and 2008 consisted of the following:

	Gross	Impairment Losses	Net
Balance, January 1, 2008	\$ 16,603	\$ —	\$ 16,603
Acquisitions	4,951	—	4,951
Additional purchase price earned under acquisition agreements	753	—	753
Purchase price adjustments	(160)	—	(160)
Impairment charge	—	(9,265)	(9,265)
Balance, December 31, 2008	22,147	(9,265)	12,882
Acquisitions	1,449	—	1,449
Additional purchase price earned under acquisition agreements	1,894	—	1,894
Purchase price adjustments	25	—	25
Impairment charge	—	(2,380)	(2,380)
Balance, December 31, 2009	25,515	(11,645)	13,870
Additional purchase price earned under acquisition agreements entered into prior to 2009	2,222	—	2,222
Impairment charge	—	(2,560)	(2,560)
Balance, December 31, 2010	\$ 27,737	\$ (14,205)	\$ 13,532

##### (b) Purchased Intangibles

	December 31, 2010		December 31, 2009		December 31, 2008		Weighted Average Amortization Period	Weighted Average Remaining Life
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization		
Customer and strategic relationships	\$ 1,335	\$ 1,033	\$ 1,335	\$ 715	\$ 2,237	\$ 1,368	3.00	1.06
Non-compete agreements	1,313	712	1,313	406	915	468	4.05	3.07
Trademarks	313	201	313	80	915	510	2.68	0.93
Total	\$ 2,961	\$ 1,946	\$ 2,961	\$ 1,201	\$ 4,067	\$ 2,346	3.43	2.24

All intangible assets are amortized to zero and do not have residual values. Amortization expense totaled \$745, \$751 and \$754 for 2010, 2009 and 2008, respectively. During the fourth quarter of 2008, a \$3,459 impairment charge for intangible assets was recorded as discussed further below.

The estimated aggregate amortization expense for future years is as follows:

2011	\$ 636
2012	165
2013	139
2014	75
Total	\$ 1,015

The following tables present details of the intangible assets acquired through business combinations during 2009 and 2008. There were no business combinations in 2010.

	Customer And Strategic Relationships		Non-compete Agreements		Trademarks and Other Intangibles		Total	
	Weighted Average Useful Life (in Years)	Amount	Weighted Average Useful Life (in Years)	Amount	Weighted- Average Useful Life (in Years)	Amount	Weighted- Average Useful Life (in Years)	Amount
2009:								
AdvancedNetworX, Inc.	2.00	\$ 30	2.00	\$ 269	—	\$ —	2.00	\$ 299
Marketware Inc.	4.00	25	5.00	367	2.00	99	4.34	491
<b>Total</b>	<b>2.92</b>	<b>\$ 55</b>	<b>3.73</b>	<b>\$ 636</b>	<b>2.00</b>	<b>\$ 99</b>	<b>3.46</b>	<b>\$ 790</b>
2008:								
Access Flow, Inc.	3.36	\$ 477	5.00	\$ 556	3.29	\$ 450	3.95	\$ 1,483
NetTeks Technology Consultants, Inc.	3.00	513	5.00	340	1.97	443	3.17	1,296
VocalMash	—	—	2.00	7	—	—	2.00	7
<b>Total</b>	<b>3.17</b>	<b>\$ 990</b>	<b>4.98</b>	<b>\$ 903</b>	<b>3.17</b>	<b>\$ 893</b>	<b>3.50</b>	<b>\$ 2,786</b>

(c) Impairment Charges

Impairment charges recorded by reporting unit during the three years ended December 31, 2010 were as follows:

Reporting Unit:	2010	2009	2008			Total
	Goodwill	Goodwill	Goodwill	Intangibles	Equipment	
New England	\$ 1,854	\$ 1,146	\$ 2,354	\$ 2,404	\$ 63	\$ 4,821
Northern California	594	—	852	1,055	284	2,191
North Carolina	—	723	—	—	—	—
VocalMash	—	286	—	—	—	—
Federal	112	225	—	—	—	—
Southwest	—	—	3,224	—	—	3,224
Southern California	—	—	1,521	—	—	1,521
Northwest	—	—	1,314	—	—	1,314
<b>Total impairment charge</b>	<b>\$ 2,560</b>	<b>\$ 2,380</b>	<b>\$ 9,265</b>	<b>\$ 3,459</b>	<b>\$ 347</b>	<b>\$ 13,071</b>

Goodwill impairment tests are performed at least annually or more frequently when events or circumstances indicate that the carrying value may not be recoverable. If a reporting unit fails step 1 of the goodwill impairment test, an impairment test of long-lived assets is triggered. Step 2 of the impairment tests compare the estimated fair value of the affected reporting unit's goodwill or long-lived asset against the carrying value of that asset. The impairment charges summarized in the table above were recorded in the fourth quarter of the year indicated. Goodwill impairment charges represent a Level 3 assessment under fair value accounting standards.

**2010**

Goodwill was recorded in 2010 for additional purchase consideration earned under the NetTeks and AF asset purchase agreements. The additional purchase consideration recorded under the AF asset purchase agreement was allocated to the various reporting units responsible for achieving the billings target on which the additional purchase consideration was based, including the New England and Federal reporting units. The NetTeks acquisition is accounted for under the New England reporting unit. The New England and Federal reporting units were adjusted to their fair value as a result of the 2009 annual goodwill impairment test. Based on an updated fair value assessment, substantially all of the 2010 additional purchase consideration accounted for under the New England and Federal reporting units was determined to be in excess of fair value and was recorded as an impairment charge during the fourth quarter in the amount of \$2,560. In connection with this triggering event, the Company tested the recoverability of its long-lived assets and concluded the carrying values did not exceed fair value. During the first two quarters of 2010, the Northern California reporting unit generated substantial operating losses compared to the operating income forecast in connection with the 2009 annual goodwill impairment test. This triggered the requirement to perform an interim impairment test of both goodwill and long lived assets, resulting in the goodwill impairment charge of \$594 recorded in the second quarter of 2010.

2009

Based on an updated fair value assessment the Company concluded that the goodwill of its New England, North Carolina, Northern California, and Federal reporting units was impaired and recorded an impairment charge of \$2,380 in the fourth quarter of 2009. The impairment was a result of the continued depressed operating results in the aftermath of the international financial crisis. In connection with this triggering event, the Company tested the recoverability of its long-lived assets and concluded the carrying values did not exceed fair value.

2008

Based on an updated fair value assessment the Company concluded that the goodwill of its New England, Northern California, Southern California, Northwest, and Southwest reporting units was impaired and recorded an impairment charge of \$9,265 in the fourth quarter of 2008. The impairment was a result of the sharp decline in the Company's market capitalization beginning in November 2008 and the rapidly deteriorating macroeconomic environment in the fourth quarter of 2008 during the international financial crisis. In connection with these triggering events, the Company tested the recoverability of its long-lived assets and concluded the carrying values of intangible assets and property and equipment in the Northern California and New England reporting units were no longer recoverable. Consequently, during the fourth quarter of 2008, the Company recorded an impairment charge of \$3,459 and \$347 to write the intangibles assets and property and equipment, respectively, down to their estimated fair values. The fair value of intangible assets is estimated primarily using the income approach. The income approach is based on a discounted cash flow analysis ("DCF") and calculates the fair value by estimating the after-tax cash flows attributable to a reporting unit and then discounting the after-tax cash flows to a present value using a risk-adjusted discount rate. Assumptions used in the DCF include judgments about the appropriate discount rates and terminal values, growth rates, and the amount and timing of expected future cash flows.

## 5. Property and Equipment

Property and equipment consisted of the following:

	December 31,		
	2010	2009	2008
Computer equipment	\$ 6,526	\$ 5,776	\$ 5,136
Computer software	2,774	2,543	3,015
Computer equipment under capital lease obligations	537	537	229
Furniture and fixtures	1,331	1,072	1,047
Leasehold improvements	937	730	1,209
Total property and equipment	12,105	10,658	10,636
Accumulated depreciation and amortization	(7,312)	(5,825)	(5,429)
Total property and equipment, net	\$ 4,793	\$ 4,833	\$ 5,207

Property and equipment are depreciated over their estimated useful lives ranging from three to seven years using the straight-line method. Accumulated depreciation and amortization includes accumulated amortization of computer equipment under capital lease obligations of \$358, \$203 and \$78 at December 31, 2010, 2009 and 2008, respectively. Depreciation expense includes capital lease amortization expense and is recorded in the following categories in the statements of operations:

	Year Ended December 31,		
	2010	2009	2008
Cost of sales	\$ 438	\$ 452	\$ 423
Selling, general and administrative expenses	1,664	1,916	1,490
Total depreciation and amortization expense	\$ 2,102	\$ 2,368	\$ 1,913

## 6. Accounts Payable Floor Plan

On December 16, 2009, the Company amended its senior credit facility agreement ("Agreement") with Castle Pines Capital LLC ("CPC") which provides inventory financing and working capital funding. The Agreement provides a discretionary line of credit up to a maximum aggregate amount of \$70,000 to purchase inventory from CPC approved vendors. The credit facility is collateralized by substantially all of the assets of the Company and is for a one year period with automatic one year renewals, except as otherwise provided. The Agreement contains quarterly financial covenants concerning the Company's current ratio, tangible net worth, and total liabilities to tangible net worth. The Agreement also contains other customary covenants.

The Agreement provides a working capital revolving line of credit under the above line of credit with an aggregate outstanding sublimit of \$10,000 with interest payable monthly at the rate of prime plus 0.5%.

The senior credit facility also provides an additional \$10,000 credit facility specifically for acquisitions (“Acquisition Facility”). Advances under the Acquisition Facility are not to exceed 80% of purchase price (purchase price not to exceed six times adjusted EBITDA, as defined). Interest is payable at the rate of prime plus 2% and the Agreement specifies an acquisition commitment fee of 7/8 of 1% of the advance amount. Repayment of each advance under the Acquisition Facility is interest only for first year then amortizing for 36 to 48 months, with no penalty to prepay any principal balance. The loan will also be reduced annually by an amount equal to 25% of excess cash flow, as defined. CPC may negotiate with the Company to revise existing financial covenants in conjunction with each advance as required.

Termination date of the senior credit facility was extended to December 31, 2011, subject to automatic annual renewal as defined in the Amendment. The Company expects that the Agreement will be extended under substantially similar terms.

As of December 31 borrowing capacity and availability under the Credit Facility was as follows:

	Year Ended December 31,		
	2010	2009	2008
Total Credit Facility	\$ 70,000	\$ 70,000	\$ 60,000
Borrowing base limitation	(21,685)	(23,877)	(16,873)
Total borrowing capacity	48,315	46,123	43,127
Less interest-bearing borrowings	—	—	—
Less non-interest bearing advances	(41,129)	(44,561)	(40,002)
Total unused availability	\$ 7,186	\$ 1,562	\$ 3,125

The “unused availability” is the amount not borrowed, but eligible to be borrowed. The borrowing base restrictions generally restrict our borrowings under the Credit Facility to 85% of the eligible receivables, 100% of our Floor planned inventory and 75% of Cisco vendor rebates receivable.

The Company uses the Credit Facility to finance purchases of Cisco products from Cisco and from certain wholesale distributors. Cisco provides 60-day terms, and other wholesale distributors typically provide 30-day terms. Balances under the Credit Facility that are within those respective 60-day and 30-day periods (the “Free Finance Period”) do not accrue interest and are classified as floor plan financing in our balance sheet.

To the extent that we have credit availability under the Credit Facility, it gives us the ability to extend the payment terms past the Free Finance Period. Amounts extended past the Free Finance Period accrue interest and are classified as notes payable on our balance sheet, for which there was no balance outstanding at December 31, 2010, or 2009. These extended payment balances under the Credit Facility accrue interest at the prime rate (3.25% at December 31, 2010) plus 0.5%.

As of December 31, 2010, the Company was in compliance with the Agreement’s financial covenants, and anticipates it will be able to comply with these covenants during the next twelve months. In May 2011, CPC waived the Company’s events of default under the Agreement loan covenants regarding timely provision of GAAP financial statements. In the future, if any of the loan covenants were violated, the Company would be required to seek waivers from CPC for those non-compliance events. If CPC refused to provide waivers, the amount due under the Agreement could be accelerated and the Company could be required to seek other sources of financing.

The weighted-average interest rate for borrowings under all credit line arrangements in effect during 2010, 2009 and 2008 was 0.0%, 0.0% and 7.5%, respectively. The average amount of borrowings under all credit line arrangements in effect during 2010, 2009 and 2008 were zero, zero and \$3,000, respectively.

To the extent we were unable to maintain our relationship with CPC on the same general terms and conditions as described above, we would endeavor to execute a similar relationship with another Cisco based floor plan financier.

## 7. Income Taxes

The provision for income taxes consisted of the following:

	Year Ended December 31,		
	2010	2009	2008, As Restated
Current provision:			
Federal	\$ 1,796	\$ —	\$ 63
State	439	232	221
Total current provision	2,235	232	284
Deferred expense (benefit)	(6,148)	113	1,677
Total expense (benefit) from continuing operations	(3,913)	345	1,961
Total expense (benefit) from discontinued operations	—	(47)	19
Total expense	\$ (3,913)	\$ 298	\$ 1,980

The total provision for income taxes for continuing operations during the years ended December 31, 2010, 2009 and 2008 varied from the U.S. Federal statutory rate due to the following:

	Year Ended December 31,		
	2010	2009	2008, As Restated
Federal income tax at statutory rate	\$ 490	\$ (1,327)	\$ (3,679)
Impairment of non-deductible goodwill and intangible assets	487	370	800
Meals and entertainment expenses	147	100	101
State taxes, net of Federal tax benefit	237	92	(6)
Equity compensation	137	336	183
Deferred tax rate and other	81	(31)	(125)
Valuation allowance	(5,492)	805	4,687
Total (benefit) expense from continuing operations	\$ (3,913)	\$ 345	\$ 1,961

Net deferred tax assets computed at the statutory rate related to temporary differences were as follows:

	Year Ended December 31,		
	2010	2009	2008, As Restated
Deferred tax assets:			
Accounts and notes receivable	\$ 811	\$ 738	\$ 791
Closing and severance costs	77	29	85
Deferred revenue	1,489	805	329
Share-based compensation	387	272	155
Accrued liabilities	2,770	1,704	1,412
Depreciation	—	—	45
Intangible assets	2,175	2,583	2,234
Other	28	60	23
Net operating loss carry forward /tax credit carry forward	—	437	64
Total deferred tax assets	7,737	6,628	5,138
Less: Valuation allowance	—	(5,492)	(4,687)
Net deferred tax asset	7,737	1,136	451
Deferred tax liabilities:			
Inventory reserves	(118)	(349)	(402)
Depreciation and gain / loss on disposal	(533)	(151)	—
Deferred costs	(901)	(636)	(49)
Total deferred tax liabilities	(1,562)	(1,136)	(451)
Net deferred tax asset (liability)	\$ 6,175	\$ —	\$ —

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible. Management considers the reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Management's evaluation of the realizability of deferred tax assets must consider both positive and negative evidence. The weight given to the potential effects of positive and negative evidence is based on the extent to which it can be objectively verified.

During the fourth quarter of 2008, after giving consideration to a variety of factors such as the cumulative three year net operating loss and the current year impairment charges, the Company established a full valuation allowance against its net deferred tax asset totaling \$4,687 having determined that it was more likely than not that the deferred tax assets would not be realized. As of December 31, 2009, the Company continued to maintain a full valuation allowance against net deferred tax assets totaling \$5,492. At June 30, 2010, the Company released the valuation allowance in full and recognized an income tax benefit of \$5,492. The Company reached this determination after giving consideration to a variety of factors including but not limited to: (a) the current period realization of all net operating loss (NOL) carry forwards totaling \$3,510, (b) the current period taxable income and (c) the expectation of future earnings, thus concluding that it is more likely than not that the Company's deferred tax assets will be realized.

The Company recognizes tax benefits associated with the exercise of stock options directly to stockholders' equity only when realized. Accordingly, deferred tax assets are not recognized for NOL carry forwards resulting from windfall tax benefits. A windfall tax benefit occurs when the actual tax benefit realized upon an employee's disposition of a share-based award exceeds the cumulative book compensation charge associated with the award. As of December 31, 2009, windfall tax benefits included in NOL carry forwards but not reflected in deferred tax assets were \$2,413. As of December 31, 2010, the Company expects to utilize windfall tax benefits included in NOL carry forwards but not reflected in deferred tax assets of \$2,413 with the related tax benefit reflected in additional paid-in capital.

The Company is subject to U.S. Federal income tax as well as income taxes in multiple state and local jurisdictions. With few exceptions, the Company is no longer subject to U.S. Federal or state and local income tax examinations by tax authorities for years before 2005. The Internal Revenue Service is currently reviewing the 2008 and 2009 Federal tax returns and the examination is estimated to close August of 2011. In addition, the state of Texas Comptroller's Office is performing a desk review of the franchise tax returns for the years 2008 and 2009. Presently, no adjustments have been proposed. Management has made no provision for potential adjustments.

The Company recognizes the financial statement benefit of a tax position only after determining that they are more likely than not to sustain the position following an audit. The Company believes that its income tax positions and deductions will be sustained on audit and therefore no reserves for uncertain tax positions have been established. Accordingly, no interest or penalties have been accrued as of December 31, 2010, 2009 and 2008. The Company's policy is to include interest and penalty related to unrecognized tax benefits as a component of income tax expense.

## **8. Stockholders' Equity**

### **(a) Registered Direct Offering**

In June, 2008, the Company sold 900,000 shares of common stock through a registered direct offering to certain institutional investors at a price of \$11.00 per share. The net cash proceeds, after deducting the placement agent's fee and other offering expenses of \$1,149, were approximately \$8,751. The net cash proceeds were partially used to repay the then \$6,000 outstanding balance under the Acquisition Facility, with the remainder to be used for general corporate purposes including possible future acquisitions.

### **(b) Equity Compensation Plans**

The Company currently grants stock awards under the following equity compensation plans:

*1996 Incentive Stock Plan and the 1996 Non-Employee Director Stock Option Plan* — The 1996 Incentive Stock Plan (the "1996 Incentive Plan") and the 1996 Non-Employee Director Stock Option Plan (the "Director Plan") were approved by the shareholders and no further shares may be granted under either plan. The 1996 Incentive Plan provided for the granting of incentive awards in the form of stock options, restricted stock, phantom stock, stock bonuses and cash bonuses in accordance with the provisions of the plan. The Director Plan provided for a one-time option by newly elected directors to purchase up to 5,000 common shares, after which each director was entitled to receive an option to purchase up to 5,000 common shares upon each date of re-election to the Company's Board of Directors. Options granted under the Director Plan and the 1996 Incentive Plan have an exercise price equal to the fair market value on the date of grant, are fully vested at December 31, 2007, and generally expire ten years after the grant date.

*2000 Stock Incentive Plan* — the Company adopted the 2000 Stock Incentive Plan (the "2000 Incentive Plan") as approved at the May 2000 annual shareholder's meeting. At the May 12, 2009 shareholder's meeting the 2000 Incentive Plan was amended to increase the number of shares of common stock available for stock option grants to 3,423,103. The 2000 Incentive Plan provides for the granting of incentive awards in the form of stock-based awards and cash bonuses in accordance with the provisions of the plan. All employees, including officers, and consultants and non-employee directors are eligible to participate in the 2000 Incentive Plan. Generally, the Compensation Committee has the discretion to determine the exercise price of each stock option under the 2000 Incentive Plan, and they expire within ten years of the grant date, except those classified as Incentive Stock Option ("ISO") grants to a 10% or greater stockholder. ISO grants to a 10% or greater stockholder expire within five years of the grant date. Awards granted under the 2000 Incentive Plan are subject to either cliff or graded vesting, generally ranging from three to five years. At December 31, 2010 and 2009, 225,848 shares and 193,923 shares, respectively, were available for future awards under the 2000 Incentive Plan.

(c) Grant-Date Fair Value

The Company uses the Black-Scholes option pricing model to calculate the grant-date fair value of an award. The fair value of options granted during the 2010, 2009 and 2008 periods were calculated using the following estimated weighted average assumptions:

	2010	2009	2008
Expected volatility	65%	75%	61%
Expected term (in years)	6.1	6.9	6.5
Risk-free interest rate	1.8%	3.0%	2.8%
Expected dividend yield	0%	0%	0%

The Company uses the simplified method to estimate expected lives for options granted during the period. The expected volatility is based on the historical volatility of our stock price. The risk-free interest rate is based on the yield on zero-coupon U.S. Treasury securities for a period that is commensurate with the expected term assumption. The Company has not historically issued any dividends and does not expect to in the future.

(d) Share-Based Compensation Expense

The Company uses the straight-line attribution method to recognize expense for unvested awards. The amount of share-based compensation recognized during a period is based on the value of the awards that are ultimately expected to vest. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company updates its forfeiture rate annually.

Share-based compensation expense for employee stock purchases, restricted stock awards and stock options recognized for the years ended December 31, 2010, 2009 and 2008 was as follows:

	Year Ended December 31,		
	2010	2009	2008
Cost of products and services — services	\$ 238	\$ 267	\$ 265
Selling, general and administrative expenses	1,933	1,826	1,440
Share-based compensation from continuing operations before income taxes	2,171	2,093	1,705
Income tax benefit	—	—	—
Total share-based compensation from continuing operations	\$ 2,171	\$ 2,093	\$ 1,705
Impact of total share-based compensation on net income per share:			
Basic	\$ (0.23)	\$ (0.24)	\$ (0.21)
Diluted	\$ (0.23)	\$ (0.24)	\$ (0.21)

There was no share-based compensation from discontinued operations for all periods presented. Tax benefits recorded in the consolidated statements of operations for share-based payment awards were \$715, \$67 and \$1,085 in the years ended December 31, 2010, 2009 and 2008.

(e) Option Activity

A summary of the stock option activity under the Company's stock plans for the year ended December 31, 2010, 2009 and 2008 is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Options outstanding at December 31, 2007	1,480,736	\$ 4.83		
Granted	20,000	7.59		\$ —
Exercised	(151,624)	5.48		\$ 688
Forfeited	(51,600)	9.83		\$ —
Expired	(11,930)	1.51		\$ —
Options outstanding December 31, 2008	1,285,582	\$ 4.63	5.51	\$ 1,768
Options exercisable at December 31, 2008	948,782	\$ 3.23	4.62	\$ 1,768
Options vested and options expected to vest at December 31, 2008	1,173,424	\$ 4.37	5.84	\$ 1,767

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Options outstanding at December 31, 2008	1,285,582	\$ 4.63		
Granted	47,400	6.56		\$ 33
Exercised	(12,447)	3.84		\$ 33
Forfeited	(51,707)	8.63		\$ —
Expired	(5,390)	1.44		\$ 16
Options outstanding December 31, 2009	1,263,438	\$ 4.56	4.60	\$ 2,925
Options exercisable at December 31, 2009	1,011,138	\$ 3.65	3.89	\$ 2,904
Options vested and options expected to vest at December 31, 2009	1,259,438	\$ 4.56	4.58	\$ 2,924

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Options outstanding at December 31, 2009	1,263,438	\$ 4.56		
Granted	28,000	7.46		\$ 31
Exercised	(20,468)	1.76		\$ 73
Forfeited	(40,030)	7.36		\$ —
Expired	(13,300)	1.78		\$ 44
Options outstanding December 31, 2010	1,217,640	\$ 4.61	3.66	\$ 3,130
Options exercisable at December 31, 2010	1,105,100	\$ 4.22	3.32	\$ 3,102
Options vested and options expected to vest at December 31, 2010	1,214,718	\$ 4.61	3.65	\$ 3,129

The total intrinsic value of options exercised during the year ended December 31, 2010, 2009 and 2008 was \$73, \$33 and \$688, respectively. The total grant-date fair value of stock options that became fully vested during the year ended December 31, 2010, 2009 and 2008 was approximately \$551, \$478, and \$677, respectively. The weighted average grant-date fair value of options granted during the year ended December 31, 2010, 2009 and 2008 was \$2.74, \$3.44, and \$5.28, respectively. As of December 31, 2010 and 2009, there was \$449 and \$963 of total unrecognized compensation cost, net of estimated forfeitures, related to unvested share-based option awards, which is expected to be recognized over a weighted-average period of 1.14 and 1.5 years. Stock options expiring during 2010, 2009 and 2008 were 13,300, 5,390 and 11,930, respectively.

(f) Restricted Stock Activity

A summary of the status of non-vested shares and changes during the year ended December 31, 2010, 2009 and 2008 is presented below:

<b>Non-vested Shares</b>	<b>Shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Non-vested at December 31, 2007	195,509	\$ —
Granted	332,443	\$ 8.18
Vested	(57,708)	\$ 11.17
Forfeited	(33,250)	\$ 10.00
Non-vested at December 31, 2008	436,994	\$ 9.03
Granted	342,574	\$ 3.66
Vested	(159,479)	\$ 7.08
Forfeited	(49,774)	\$ 9.33
Non-vested at December 31, 2009	570,315	\$ 6.33
Granted	209,000	\$ 5.73
Vested	(230,730)	\$ 6.51
Forfeited	(95,570)	\$ 5.98
Non-vested at December 31, 2010	453,015	\$ 6.03

Share-based compensation expense related to restricted stock awards was \$1,477, \$1,176, and \$771 for the years ended December 31, 2010, 2009 and 2008, respectively. As of December 31, 2010 and 2009, there was \$2,339 and \$3,126 of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plan, which is expected to be recognized over the weighted-average period of 1.8 and 2.1 years.

Upon re-election to the Board of Directors in May 2009 and 2008, INX issued 19,149 and 7,443 shares, respectively to its non-employee directors. The issued shares were valued at \$90 as determined by multiplying the shares issued by the closing price per share on May 12, 2009 and May 13, 2008.

(g) Employee Stock Purchase Plan

On April 3, 2008, the Company's Board of Directors approved the INX Inc. 2008 Employee Stock Purchase Plan (the "Purchase Plan") which was approved by Company stockholders at the Annual Meeting on May 13, 2008. The purpose of the Purchase Plan is to provide employees of the Company and its designated subsidiaries with an opportunity to purchase common stock of the Company. The aggregate number of shares of the Company's common stock that will be available for issuance under the Purchase Plan is 500,000 shares, which shares may be authorized, but unissued shares or treasury shares. Eligible employees may elect to participate in each offering period by electing to contribute between 1% and 6% of such employee's compensation to the Purchase Plan on each payroll date during the offering period. The Purchase Plan provides for a \$6 limit on the amount of contributions that may be made to the Purchase Plan during any offering period. The purchase price per share is equal to 85% of the fair market value on the first trading day of the offering period or, if less, 85% of the fair market value on the last trading day of the purchase period. Under the Purchase Plan, during 2010, 2009 and 2008, the company issued 183,478, 238,919 and 77,600 shares, respectively and recognized share based compensation expense of \$276, \$347 and \$193, respectively.

(h) Capital Stock

Holders of the Company's common stock are entitled to one vote per share on all matters to be voted on by shareholders and are entitled to receive dividends, if any, as may be declared from time to time by the Board of Directors of the Company. Upon any liquidation or dissolution of the Company, the holders of common stock are entitled, subject to any preferential rights of the holders of preferred stock, to receive a pro rata share of all of the assets remaining available for distribution to shareholders after payment of all liabilities. There are no shares of preferred stock issued or outstanding.

(i) Common Stock Repurchase Plan

Effective December 4, 2007, the Board of Directors authorized the purchase of up to \$2,000 of the Company's common stock on or before March 31, 2008. These purchases were required to be made in open market or privately negotiated transactions in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended, subject to market and business conditions, applicable legal requirements and other factors. The plan also required the purchased shares to be retired as soon as practicable following the purchase. The plan did not obligate the Company to purchase any particular amount of common stock and could be suspended at any time at the Company's discretion. During the three-month period ended March 31, 2008, 184,985 shares were purchased for \$1,536, of which 3,800 shares were purchased in 2007 and settled and recorded in 2008. From inception of the repurchase plan to March 31, 2008, 186,785 shares were purchased for \$1,554, an average purchase price of \$8.27 per share. The December 4, 2007 repurchase plan expired on March 31, 2008.

On May 2, 2008, the Board of Directors authorized a repurchase plan of up to \$2,000 of the Company's common stock on or before July 31, 2008 under similar terms as the plan authorized on December 4, 2007. During July, 2008, 346 shares were purchased under the plan for \$3, an average purchase price of \$8.15 per share. The May 2, 2008 repurchase plan expired on July 31, 2008.

On September 10, 2008, the Board of Directors authorized a common stock repurchase plan of up to \$2,000 of the Company's common stock on or before December 31, 2008. The purchases were required to be made in open market or privately negotiated transactions in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended, subject to market and business conditions, applicable legal requirements and other factors. The plan also required the purchased shares to be retired as soon as practicable following the purchase. The plan did not obligate the Company to purchase any particular amount of common stock and could be suspended at any time at the Company's discretion. During September 2008, 78,940 shares were purchased under the plan for \$557, an average purchase price of \$7.03 per share. During the three month period ended December 31, 2008, 201,933 shares were purchased under the plan for \$1,138, an average purchase price of \$5.61 per share. On December 3, 2008, the Board of Directors modified the September 10, 2008 common stock repurchase plan, authorizing the repurchase of \$2,000 during the period January 1, 2009 to March 31, 2009. During the three-month period ended March 31, 2009, 19,466 shares were purchased for \$66 and retired. From inception of the repurchase plan to March 31, 2009, 300,339 shares were purchased for \$1,762, an average purchase price of \$5.84 per share. The repurchase plan expired on March 31, 2009.

On May 12, 2009, the Board of Directors authorized a new common stock repurchase plan of up to \$2,000 of the Company's common stock on or before October 31, 2009. The purchases were required to be made in open market or privately negotiated transactions in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended, subject to market and business conditions, applicable legal requirements and other factors. The plan also required the purchased shares to be retired as soon as practicable following the purchase. The plan did not obligate the Company to purchase any particular amount of common stock and could be suspended at any time at the Company's discretion. No shares of common stock were repurchased under the plan. The plan expired on October 31, 2009.

#### (j) Issuance of Restricted Common Stock

In December 2008, the Company issued 6,000 shares of restricted common stock to an investor relations firm under a services agreement. The issued shares were valued at and the Company recognized the resultant expense \$26 as determined by multiplying the shares issued by the closing price per share on December 31, 2008.

On January 5, 2010, the Company entered into a service agreement with an investor relations firm and per the terms of the agreement issued to them 5,000 shares valued at \$28 on February 1, 2010 and an additional 5,000 shares valued at \$25 on July 1, 2010. The issued shares were valued and the Company recognized the resultant expense by multiplying the shares issued by the closing price per share on each respective date.

#### (k) Warrants

On May 7, 2004, 575,000 warrants were issued to purchase common stock at an exercise price of \$12.45 per share. These warrants were exercisable through May 7, 2009 and were subject to redemption by the Company at a price of \$0.25 per warrant upon 30 days notice to the holders; however, the Company could only redeem the warrants if the closing price for its common stock for any five consecutive days has equaled or exceeded \$16.60. All 575,000 warrants expired unexercised. Included in the units issued on May 7, 2004 were warrants issued to the underwriters to purchase up to 50,000 units at an exercise price equal to \$19.92 per unit. Warrants representing 5,045 units were exercised with the remaining units expiring unexercised on May 7, 2009.

In January 2006, the Company issued warrants to the investment banker of the Stratasoft sale to purchase up to 40,000 shares of common stock at an exercise price equal to \$6 per share expiring January 27, 2011. The warrants were exercised in full on January 26, 2011.

In January 2007, the Company issued warrants to an investor relations firm under a services agreement to purchase up to 50,000 shares of common stock at an exercise price equal to \$8.00 per share expiring January 1, 2009. The warrants expired unexercised.

### 9. Major Customers, Major Vendor and Geographic Concentrations

No single customer represented more than 10% of 2010, 2009 or 2008 consolidated revenues. Cisco, the Company's main vendor, represented about 80% of product sales. International sales were approximately 1.3%, 3.7% and 4.1% of consolidated revenues for 2010, 2009 and 2008, respectively, based on the country in which the products were delivered or services provided.

## 10. Commitments and Contingencies

### (a) Self-Insured Medical Plan

Effective January 1, 2009, the Company implemented a self-insured employee medical benefit plan. The Company maintains stop loss coverage with a third party insurer at \$100 per claim and an annual aggregate loss limit of \$3,215 based on the current enrollment in the plan. During the years ended December 31, 2010 and 2009, medical claims totaling \$1,977 and \$1,761 were incurred. At December 31, 2010 and 2009, the Company recognized a liability for \$192 and \$190, respectively, representing an estimate of the remaining cost of claims incurred as of the balance sheet date. The Company's liability is based on an analysis of historical data and actuarial estimates and includes known claims and an estimate of claims incurred but not yet reported. Management believes that it has adequately reserved for the self-insurance liability; however, any significant variation in claims incurred but not paid from historical trends could cause actual expense to differ materially from the accrued liability.

### (b) Litigation

On February 6, 2009, the Company filed a lawsuit in the United States District Court Eastern District of Texas styled *InternetworkExperts, Inc. v. International Business Machines Corporation* ("IBM") claiming damages totaling \$1,791 plus interest, attorney fees, and costs of suit for breach of purchase orders in 2004 and 2006 under which payments were due upon early termination of services. On January 29, 2010, a settlement agreement was executed covering all outstanding litigation between the parties, resulting in IBM paying INX the amount of \$310 less legal fees of \$112. The net settlement was reflected as a reduction of selling, general and administrative expenses in the first quarter of 2010.

On August 3, 2009, the Company filed a lawsuit in the 152nd District Court of Harris County styled *INX, Inc. v. General Consulate of Equatorial Guinea* seeking damages plus interest, attorney fees, and costs of suit for breach of contract in connection with the Company's lease of its then Houston, Texas location. On August 13, 2010, the Company received payment of \$140 in settlement of the litigation, which was recognized as a reduction of selling, general and administrative expenses in the third quarter of 2010.

On July 15, 2010, the Company filed a lawsuit in the United States District Court for the District of New Mexico ("US District Court") styled *INX, Inc. v. Azulstar, Inc.* ("Azulstar") seeking compensatory and punitive damages plus interest, attorneys' fees, and costs of suit for breach of contract, tortious interference with business relations and existing contractual relations, and other claims. Azulstar provided professional services as a subcontractor to the Company in connection with the State of New Mexico, Department of Transportation RailRunner Wireless System Project ("RailRunner Project"). Azulstar hired subcontractors to assist it and is alleged by the Company not to have paid at least one subcontractor for work performed. In addition to paying Azulstar directly for all work performed except \$23 withheld, the Company paid an Azulstar subcontractor \$146 directly. The Company charged the duplicate costs to professional services cost of sales in the quarter ended December 31, 2009. On September 10, 2010, Azulstar filed a motion to dismiss the Company's claim for failure to join a party under Rule 19 of the Federal Rules of Civil Procedure ("Motion to Dismiss"). The US District Court has not yet ruled on the motion. The amount of damages and costs that may ultimately be recovered by the Company, if any, cannot be determined at this time. The Motion to Dismiss includes statements that Azulstar intends to file breach of contract claims against the Company. The nature and extent of Azulstar's allegations cannot be determined and the final outcome of any lawsuit that may be filed by Azulstar on this matter cannot be predicted, including whether such threatened lawsuit could have a material adverse effect on INX's results of operations or financial position.

The Company is also party to other litigation and claims which management believes are normal in the course of its operations. While the results of such litigation and claims cannot be predicted with certainty, the Company believes the final outcome of such matters will not have a materially adverse effect on its results of operations, financial position, or cash flows.

### (c) Contingencies

The Company has contracts with the Federal government and its agencies and subcontracts with various Federal government contractors. The Company is subject to audit from time to time for compliance with government regulations and contract provisions including costs incurred. An adverse finding under an audit could result in the disallowance of our costs under a government contract, termination of a government contract, forfeiture of profits, suspension of payments, fines and suspension and prohibition from doing business with the Federal government. In the event that an audit results in disallowance of our costs under a contract, the Company has the right to appeal the findings of the audit under applicable dispute resolution provisions.

(d) Lease Commitments

The Company leases office space and certain equipment under non-cancelable operating and capital leases expiring on various dates through 2015 with various renewal options. The Dallas corporate offices and regional office lease expires in 2015 and is renewable for one additional five year term. Other office leases include leases for the Company's accounting and sales offices in Houston, Texas and office leases for various regional sales offices. Some office leases contain scheduled base rent increases over the term of the lease and may include periodic rent adjustments for real estate taxes, insurance and other operation expenses applicable to the property. For leases with scheduled rent increases, the Company recognizes rent expense ratably over the lease term. Additionally, some office lease agreements provide for the cost of leasehold improvements to be paid or subsidized by the landlord. We recognize landlord payments for leasehold improvements as additions to leasehold improvements and deferred rent expense. Deferred rent expense is amortized ratably over the lease term. During the years ended December 31, 2010, 2009 and 2008, we recognized \$488, \$136, and \$0, in landlord paid leasehold improvements.

(e) Operating Leases

Rent expense for the years ended December 31, 2010, 2009 and 2008 totaled \$2,640, \$2,301 and \$1,940, respectively. During the fourth quarter of 2009, future minimum lease payments for a vacated location were accrued totaling \$145, less a lump sum sublease payment of \$46 received in 2010. Future minimum rental commitments on non-cancellable operating leases with initial or remaining terms in excess of one year are \$1,684 in 2011, \$1,140 in 2012, \$729 in 2013, \$770 in 2014, and \$599 in 2015.

(f) Capital Leases

Future minimum lease payments on capital leases are \$186 in 2011 and \$55 in 2012, and include total imputed interest of \$9.

(g) 401(k) Plan

The Company maintains a 401(k) savings plan wherein it matches a portion of the employee contribution. Effective March 1, 2008, the Company match was increased to 50 percent of the employee's contribution to a maximum of three percent of compensation. Previously the Company match was \$10 per pay period plus three percent of the employee's contribution. In addition, there is a discretionary matching fund based on the Company's profitability. All full-time employees who have completed 90 days of service with the Company are eligible to participate in the plan. Declaration of the discretionary portion of the matching fund is at the discretion of the Board. The Company has made no additional contributions to the plan for the three years ended December 31, 2010, 2009 and 2008. Under the standard plan matching program, the Company's expense was \$510, \$525 and \$557 for the years ended December 31, 2010, 2009 and 2008, respectively.

## 11. Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date. When an asset or liability is required to be measured at fair value, an entity is required to maximize the use of observable inputs and minimize the use of unobservable inputs using a fair value hierarchy as follows:

- Level 1: Observable inputs such as quoted prices for identical assets or liabilities in active markets.
- Level 2: Observable inputs other than quoted prices that are directly or indirectly observable for the asset or liability, including quoted prices for similar assets or liabilities in active markets; quoted prices for similar or identical assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3: Unobservable inputs that reflect the reporting entity's own assumptions.

The carrying amount of cash and cash equivalents, receivables, inventory, deferred costs, prepaid expenses, accounts payable, accounts payable floor plan, accrued expenses, deferred revenue and other current assets and liabilities are a reasonable estimate of their fair values due to their short duration. The Company's financial instruments measured at fair value on a recurring basis that are subject to the hierarchy disclosure requirements are as follows:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
Estimated Contingent Consideration:				
Balance at December 31, 2007	\$ —	\$ —	\$ —	\$ —
Additions	—	—	—	—
Adjustment of estimate	—	—	—	—
Balance at December 31, 2008	—	—	—	—
Additions	—	—	1,302	1,302
Adjustment of estimate	—	—	109	109
Balance at December 31, 2009	—	—	1,411	1,411
Adjustment of estimate	—	—	(1,278)	(1,278)
Balance at December 31, 2010	\$ —	\$ —	\$ 133	\$ 133

The Company's other non-financial assets include goodwill, intangible assets and property and equipment, which are classified as Level 3 assets. These assets are measured at fair value on a non-recurring basis as part of the Company's impairment assessments and as circumstances require.

Description	Fair Value Measurements Using				Total Gains (Losses)
	Year Ended December 31, 2010	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Goodwill	\$ 13,532	\$ —	\$ —	\$ 13,532	\$ (2,560)
Intangible assets, net	1,015	—	—	1,015	—
Property and equipment, net	4,793	—	—	4,793	—
Total					\$ (2,560)

Description	Fair Value Measurements Using				Total Gains (Losses)
	Year Ended December 31, 2009	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Goodwill	\$ 13,870	\$ —	\$ —	\$ 13,870	\$ (2,380)
Intangible assets, net	1,760	—	—	1,760	—
Property and equipment, net	4,833	—	—	4,833	—
Total					\$ (2,380)

Fair Value Measurements Using

Description	Year Ended December 31, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Gains (Losses)
Goodwill	\$ 12,882	\$ —	\$ —	\$ 12,882	\$ (9,265)
Intangible assets, net	1,721	—	—	1,721	(3,459)
Property and equipment, net	5,207	—	—	5,207	(347)
Total					<u>\$ (13,071)</u>

## 12. Discontinued Operations

In November, 2005, the Company's Board of Directors approved a plan to sell its Stratasoft subsidiary and Valerent operations. Under a Stock Purchase Agreement ("SPA") dated January 26, 2006, INX sold all outstanding shares of Stratasoft's common stock. The Company indemnified the buyer for potential losses as defined in the SPA to a maximum of \$1,400, inclusive of amounts placed in escrow of \$800. The amount placed in escrow was fully expended in 2009 and the Company incurred an additional \$137 of legal and other costs which was recorded as a loss on disposal of discontinued operations. The period for presenting claims under the SPA has expired and there are currently no matters subject to pending or threatened litigation.

In October 2006, the Company sold its Valerent operations for cash and a promissory note in two separate transactions. One of the transactions included an earn-out provision that required additional consideration to be paid to the Company over a two year period based on sales levels achieved by the Valerent's consulting operations. The promissory note had a face value of \$70 and was payable in twenty-four monthly installments of \$3 plus interest of 10%. Due to the uncertainty associated with the collection of the promissory note, the gain on the sale of Valerent was deferred and recognized as payments were received. All installments of the promissory note were paid as scheduled. During the year ended December 31, 2008, the Company received \$30 in note payments and earn-out payments of \$26 which were recorded as gain on disposal of discontinued operations. All promissory note payments and payments due under the earn-out provisions were fully paid in 2008.

The gain (loss) on disposal of discontinued operations are as follows:

	Year Ended December 31,	
	2009	2008
Gain (loss) on sale of discontinued operations:		
Stratasoft	\$ (137)	\$ —
Valerent	—	56
Income tax (expense) benefit	47	(19)
Income (loss) from discontinued operations, net of income taxes	<u>\$ (90)</u>	<u>\$ 37</u>

The components of liabilities of discontinued operations in the accompanying balance sheets are as follows:

	December 31,	
	2009	2008
Other current liabilities: Accrued expenses	\$ 67	\$ 44

There were no results of operations or balance sheet components of discontinued operations for the year ended December 31, 2010.

## 13. Unaudited Quarterly Financial Data

The following table sets forth certain unaudited quarterly financial information for each quarter in 2010, 2009 and 2008:

	2010				2009			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
						(As Restated)	(As Restated)	(As Restated)
Total revenue	\$ 72,961	\$ 84,913	\$ 84,055	\$ 70,048	\$ 57,088	\$ 57,743	\$ 56,179	\$ 55,937
Total gross profit	\$ 17,233	\$ 19,151	\$ 17,068	\$ 12,533	\$ 12,695	\$ 13,031	\$ 12,488	\$ 11,927
Net income (loss) from continuing operations	\$ (1,400)	\$ 927	\$ 6,373	\$ (547)	\$ (3,541)	\$ (201)	\$ 210	\$ (763)
Income (loss) from discontinued operations, net of taxes	\$ —	\$ —	\$ —	\$ —	\$ 14	\$ (48)	\$ (17)	\$ (39)
Net income (loss)	\$ (1,400)	\$ 927	\$ 6,373	\$ (547)	\$ (3,527)	\$ (249)	\$ 193	\$ (802)
<b>Net income (loss) per share:</b>								
Basic	\$ (0.15)	\$ 0.10	\$ 0.69	\$ (0.06)	\$ (0.39)	\$ (0.03)	\$ 0.02	\$ (0.09)
Diluted	\$ (0.15)	\$ 0.09	\$ 0.65	\$ (0.06)	\$ (0.39)	\$ (0.03)	\$ 0.02	\$ (0.09)
<b>Weighted average shares:</b>								
Basic	9,449,780	9,294,873	9,200,788	9,109,924	9,038,777	8,927,549	8,822,621	8,706,210
Diluted	9,449,780	9,880,852	9,753,846	9,109,924	9,038,777	8,927,549	9,319,280	8,706,210

	2008			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
	(As Restated)	(As Restated)	(As Restated)	(As Restated)
Total revenue	\$ 62,154	\$ 71,942	\$ 63,959	\$ 58,497
Total gross profit	\$ 11,604	\$ 13,390	\$ 13,901	\$ 12,108
Net income (loss) from continuing operations	\$ (15,403)	\$ 556	\$ 1,103	\$ 959
Income (loss) from discontinued operations, net of taxes	\$ 14	\$ 9	\$ 10	\$ 4
Net income (loss)	\$ (15,389)	\$ 565	\$ 1,113	\$ 963
<b>Net income (loss) per share:</b>				
Basic	\$ (1.78)	\$ 0.06	\$ 0.15	\$ 0.13
Diluted	\$ (1.78)	\$ 0.06	\$ 0.13	\$ 0.12
<b>Weighted average shares:</b>				
Basic	8,655,761	8,746,691	7,579,303	7,550,904
Diluted	8,655,761	9,338,353	8,281,715	8,242,191

**Schedule II**  
**Valuation and Qualifying Accounts**  
**For Each of the Three Years Ended December 31, 2010**  
**(Amounts in Thousands)**

	Balance at Beginning Of Year	Charges to Costs and Expenses	Write-offs	Recoveries	Other Changes	Balance at End of Year
<b>Allowance for doubtful accounts:</b>						
2008	\$ 470	\$ 541	\$ 276	\$ —	\$ —	\$ 735
2009	735	294	761	10	17	295
2010	295	457	119	13	5	651
<b>Allowance for sales returns:</b>						
2008	347	84	—	—	—	431
2009	431	(116)	—	—	—	315
2010	315	51	—	—	—	366
<b>Reserve for inventory obsolescence:</b>						
2008	94	(59)	—	—	—	35
2009	35	16	—	—	—	51
2010	51	(44)	—	—	—	7
<b>Valuation allowance for deferred tax assets :</b>						
2008	—	4,687	—	—	—	4,687
2009	4,687	805	—	—	—	5,492
2010	5,492	253	—	—	(5,745)	—

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

## **Item 9A. Controls and Procedures**

### **Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of certain members of our management, including our Chief Executive Officer and Chief Financial Officer, we completed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based on this evaluation and as further set forth below, we believe our disclosure controls and procedures were not effective as of December 31, 2010.

### **Management’s Assessment of Disclosure Controls and Procedures**

As a result of the material weaknesses in our internal control over financial reporting discussed below, we have concluded that our disclosure controls and procedures at December 31, 2010 were not effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC.

In addition to our material weaknesses in internal control over financial reporting as set forth in our management report below, we also determined that our disclosure controls and procedures had not been designed to ensure that information required to be disclosed by us in these reports was accumulated and communicated to our management, as appropriate, to allow timely decisions regarding required disclosures. We determined that our disclosure controls were not effective, as follows:

1. We have been over reliant on a few select employees, and have not developed and implemented sufficient management training programs to educate our key managers on matters related to the Exchange Act reporting and disclosure requirements.
2. We did not have in place information and communication structures that were sufficient to ensure that reportable events regarding our business operations were communicated completely, accurately and timely as required by the Exchange Act.

### **Disclosure Controls and Procedures Remediation Initiatives**

With respect to our training of management personnel, our remediation efforts will include, but not be limited to, the implementation of training programs for the appropriate key managers who are integral to our disclosure controls. This training will include initial management training as well as on-going education on the reporting requirements of the Exchange Act.

With respect to improving our disclosure reporting structure and internal communication, our remediation efforts will include, but will not be limited to, designing, documenting and implementing processes to internally report, both on a periodic and routine on-going basis, items that could impact disclosure and reporting requirements that will keep management apprised of key events that may impact our reporting under the Exchange Act.

In light of the ineffectiveness of our disclosure controls and procedures described above, we performed additional procedures to ensure that our disclosures are presented in accordance with the requirements of the Exchange Act. Accordingly, we believe that the information included in this report meets the requirements set forth in the Exchange Act.

### **Management’s Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2010.

In conducting the evaluation, our management used the criteria based on the framework of Internal Control over Financial Reporting —Guidance for Smaller Public Companies issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our evaluation, we believe that, as of December 31, 2010, our internal control over financial reporting was not effective based on those criteria.

We have identified the following material weaknesses in our system of internal controls over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company’s annual or interim financial statements will not be prevented or detected in a timely basis.

## **Overview**

Like many other smaller reporting companies, our business was founded on an entrepreneurial spirit focused on seizing a business opportunity and driving revenue. We have grown in size to where today we have over \$300 million in revenue and are quickly approaching 500 employees. Over the course of time, we modified our business strategy and acquired other businesses. Compared to only a few years ago, we are now operating a more complex business model placing an even greater requirement on the efficient and effective execution of our business processes, financial processes and systems.

As we grew we endeavored to have our business processes, financial processes and systems keep pace with the developing complexity of our business. Nonetheless, we did not adequately invest in maintaining and developing the appropriate processes, technology and human resources to execute our business model efficiently and effectively from a business and financial reporting perspective which adversely impacts our internal controls over financial reporting. We are currently undertaking efforts to assess and improve our policies and procedures. We are reviewing our human capital requirements with a focus on the appropriate qualifications, supervision, lines of reporting and communication, and the related assignment of authority and responsibility.

## **Revenue Accounting**

As previously disclosed in our Current Report on Form 8-K filed with the SEC on March 26, 2010, we announced that we were delaying our fourth quarter earnings release (for the year ended December 31, 2009) and would not file our Annual Report on Form 10-K for the fiscal year 2009 by the due date in order to allow us additional time for the reexamination of our revenue recognition under Accounting Standards Codification (ASC) 605-25, Revenue Recognition, Multiple-Element Arrangements, previously referred to as Emerging Issues Task Force No. 00-21, "Revenue Arrangements with Multiple Deliverables" ("EITF 00-21").

In our Current Report on Form 8-K filed with the SEC on June 21, 2010, we announced that the Audit Committee of our Board of Directors, upon the recommendation of management, had determined that our previously issued financial statements included in our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2008, our Quarterly Report for the quarter ended March 31, 2009 on Form 10-Q/A and for the quarters ended June 30, 2009 and September 30, 2009 on Form 10-Q, should no longer be relied upon as a result of certain errors affecting the timing of recognition of revenues and costs of revenues.

In this Form 10-K filing and in the contemporaneously filed Form 10-Qs for the first three quarters of 2010, we restate our financial statements for the 2008 quarterly and annual periods and the first three quarters of 2009.

We identified the following material weaknesses with respect to our legacy revenue accounting:

1. We did not employ sufficiently qualified staff, and did not design sufficient documentation and review procedures to appropriately apply EITF 00-21, Revenue Arrangements with Multiple Deliverables, now referred to as ASC 605-25 Revenue Recognition, Multiple-Element Arrangements.
2. We did not have sufficient procedures with respect to contract reviews to appropriately assess the impact of customer acceptance provisions when determining if delivery had occurred in order to recognize revenue.
3. We did not have sufficient procedures to identify and assess product sales that should be accounted for on a net presentation basis in accordance with EITF 99-19, now ASC 605-45. In addition, we lacked sufficient controls over our products database to monitor the appropriateness of any changes related to net/gross presentation.
4. We did not have sufficient policies, procedures, training, or staffing criteria, with respect to our sales order entry process to correctly capture the applicable shipping terms for our sales transactions.
5. We did not have sufficient policies and procedures, training, or staffing criteria, with respect to linking customer orders into arrangements when negotiated as a package and requiring, collecting and maintaining sufficient written documentation when consummating a customer order and proceeding with the sales order entry process.
6. We did not effectively operate our control associated with the review of the service revenue accrual, resulting in computational errors.

With respect to the efforts we undertook to perform the revenue restatement we identified the following material weaknesses:

1. We did not have sufficient procedures to test the software code developed to perform certain revenue recognition calculations.
2. We did not have sufficient procedures to control the accuracy and completeness of data uploaded into our database for revenue recognition calculation purposes.
3. We did not sufficiently assess and apply certain aspects of ASC 605-25 Revenue Recognition, Multiple-Element Arrangements to the particular facts and circumstances of our revenue arrangements.

## **Technical Accounting and Other**

We identified the following additional material weaknesses.

### Contingent Consideration Related to Business Acquisitions

We did not maintain effective internal controls to ensure the appropriate recording and reporting of certain business acquisition related payments. Specifically, our controls were not designed to ensure that the redistribution of such contingent acquisition-related payments from the selling shareholders to certain of our employees was correctly accounted for in accordance with GAAP. In addition we did not adequately assess this GAAP accounting requirement. As a

consequence we did not correctly recognize non-cash expense for certain redistributed contingent acquisition-related payments which had already been correctly recognized as additional goodwill at the time of the payments.

*Income Tax Valuation Allowance*

We did not have sufficiently qualified staff to properly assess releasing the income tax valuation allowance. We originally determined to maintain a full income tax valuation allowance against our net deferred tax assets based on our three year cumulative losses before taxes. We did not adequately assess the other stronger evidence which when considered with the positive evidence indicated a release of the valuation allowance was appropriate, including: (a) the realization of all net operating loss carry forwards, (b) the current period taxable income and (c) our expectations of future earnings.

### Goodwill and Other Long-Lived Asset Valuations

We did not sufficiently design our internal controls to ensure that our goodwill and other long-lived asset valuation calculations were correct, as follows:

1. We did not adequately document the assumptions used for our internal projections.
2. Our internal financial model was not reviewed in detail by someone other than the preparer.
3. We did not establish review procedures to adequately supervise and review the work of the outside valuation firm we hired to prepare the valuations.
4. We did not establish a procedure to determine if the outside valuation firm retained by us had adequate controls and review procedures to assess the quality and accuracy of their own work prior to delivering their reports to us.

### **Management's Internal Control Over Financial Reporting Remediation Initiatives**

#### ***Revenue Accounting***

To address the material weaknesses related to our revenue accounting, our remediation efforts will include, but will not be limited to, the following.

Our efforts to remediate our revenue accounting material weaknesses will involve a holistic restructuring of our entire revenue accounting process beginning with sales order entry through cash collection. We will develop policies and procedures including documentation requirements, for the entire revenue process, addressing both technical accounting matters and the related business processes. We will hire appropriate staff, develop and implement training, and conduct routine assessments of compliance with our new procedures.

We intend to implement a solution that leverages the use of our technology resources, beginning with the tracking of sales opportunities and will include a database system that facilitates the contract review process, enables linkage of multiple customer orders into arrangements when negotiated as a package and documents delivery of orders.

With respect to the service revenue accrual material weakness, we will implement an additional follow-up procedure to confirm the control as designed was performed, and we will modify access to underlying project reports to implement a cut-off control and prevent data changes.

#### ***Technical Accounting and Other***

##### Contingent Consideration Related to Business Acquisitions

To address the material weaknesses in our accounting for contingent consideration related to our business acquisitions, our remediation efforts will include, but will not be limited to, the following:

1. We will include a provision in our future business combination agreements requiring selling shareholders to timely inform us if any contingent consideration is redistributed to our employees, including a certification document to be executed at the time contingent consideration is disbursed.
2. We will enhance our accounting capabilities and knowledge with respect to accounting for contingent consideration as required by GAAP.
3. In future employment agreements with individuals that become employees as a result of business acquisitions, we will include a provision requiring disclosure to us with respect to their receipt of any redistributed acquisition related payments.

##### Income Tax Valuation Allowance

To address our material weakness with respect to the accounting for our income tax valuation allowance we will enhance the accounting capabilities and knowledge of our staff and implement a review procedure to be performed by someone with the necessary knowledge and experience to correctly conclude on the assessment of the need for a valuation allowance.

### Goodwill and Other Long-Lived Asset Valuations

To address our material weaknesses in our goodwill and other long-lived asset valuation calculations our remediation efforts will include, but not be limited to, the following:

1. We will develop and implement a comprehensive set of documentation requirements regarding our forecast assumptions.
2. We will develop and implement a detailed financial model review and approval process.
3. We will develop and implement a detailed set of review procedures to assess the work product provided by our external valuation services firm.
4. We will develop and implement procedures to assess the quality and completeness of the internal controls performed by our external valuation services firm prior to their delivery of work product to us.

We anticipate these actions will improve our internal control over financial reporting and will address the related material weaknesses identified above. We are currently planning and initiating efforts to implement these improvements in our internal control over financial reporting. However, because the institutionalization of the internal control process requires repeatable process execution, the successful execution of these controls, for at least several periods, may be required prior to management being able to definitively conclude that the material weaknesses have been fully remediated.

In light of the material weaknesses described above related to our internal control over financial reporting, we performed significant additional analysis and other post-closing procedures to ensure that our financial statements were prepared in accordance with generally accepted accounting principles. Accordingly, we believe that the financial statements included in this report fairly present in all material respects, our financial condition, results of operations, changes in shareholders' equity and cash flows for the periods presented.

### **Changes in Internal Control over Financial Reporting**

During the fourth quarter of 2010, there have been no changes in our internal controls over financial reporting that has materially affected, or is reasonably likely to affect, our internal control over financial reporting.

The certifications of INX's Principal Executive Officer and Principal Financial Officer attached as Exhibits 31.1 and 31.2 to this Annual Report on Form 10-K include, in paragraph 4 of such certifications, information concerning INX's disclosure controls and procedures and internal controls over financial reporting. Such certifications should be read in conjunction with the information contained in this Item 9A for a more complete understanding of the matters covered by such certifications.

### **Item 9B. Other Information.**

On May 31, 2011, the Company received a waiver of events of default under the Agreement loan covenants through June 3, 2011, regarding: (a) non-timely provision of GAAP financial statements for the year ended 2009 and the three quarterly periods in 2010 and (b) non-timely provision of GAAP financial statements for the year ended 2010 and a waiver of events of default under the Agreement loan covenants through June 30, 2011 regarding non-timely provision of GAAP financial statements for the quarterly period ended March 31, 2011.

## PART III

### Item 10. Directors, Executive Officers, and Corporate Governance

<u>Name</u>	<u>Age</u>	<u>Position with the Company</u>
James H. Long	52	Executive Chairman and Chairman of the Board
Donald R. Chadwick	67	Director, Nominating Committee Chairman
John B. Cartwright	64	Director, Compensation Committee Chairman
Cary Grossman	57	Director, Audit Committee Chairman
Mark T. Hilz	52	Director Nominee, President and Chief Executive Officer
Tilman J. Falgout, III	61	Director Nominee
Robert D. Repass	50	Director Nominee
William M. Sams	73	Director Nominee
Philip Rydzewski	48	Chief Financial Officer

#### Board of Directors

Set forth below is certain information regarding the current directors and nominees for election to the Board of Directors:

*James H. Long*, age 52, is the Company's founder and served as the Chairman of the Board and Chief Executive Officer since its inception in 1983. In October of 2010, Mr. Long resigned as Chief Executive Officer and became the Company's Executive Chairman. Mr. Long also served as the Company's President through December 2003. Prior to founding the Company, Mr. Long served with the United States Navy in a technical position and was then employed by IBM in a technical position.

Mr. Long's day-to-day leadership and involvement with the Company, and his knowledge of, and many years of experience with, the Company's operations and financial position, as well as his many years of relevant technology industry experience, make him well qualified to serve on our Board of Directors.

*Donald R. Chadwick*, age 67, has served as a member of the Board of Directors since September 1996 and currently serves as the chair of the Nominating Committee of the Board of Directors. He served as Secretary from February 1992 to August 2002 and served as Chief Financial Officer of the Company from February 1992 until December 1999. As Chief Financial Officer, his duties included supervision of finance, accounting and controller functions. Mr. Chadwick is also a Certified Public Accountant.

Mr. Chadwick's background in finance and accounting, complemented by his knowledge of the Company, its financial position and its industry, which he developed in part through his service as the Company's Chief Financial Officer and Secretary, makes him well qualified to serve on our Board of Directors.

*John B. Cartwright*, age 64, has served as a member of the Board of Directors since August 2001 and currently serves as the chair of the Compensation Committee of the Board of Directors. He has been the owner of John B. Cartwright & Associates, a Certified Public Accounting firm, since 1990. From 1973 to 1990, Mr. Cartwright was the managing partner or managing stockholder of Cartwright, Matthews, Gonsoulin & Bradley, PC, Cartwright, Matthews & Gonsoulin, a Partnership and Cartwright & Matthews, a Partnership. From 1969 to 1973, Mr. Cartwright was an Audit Supervisor of Touche Ross & Co. (now Deloitte & Touche LLP) in Houston. Mr. Cartwright is a Certified Public Accountant and a member of the American Institute of Certified Public Accountants, Texas Society of Certified Public Accountants, Houston Chapter of the Texas Society of Certified Public Accountants, and the past President of the Houston Chapter of the Community Associations Institute.

Mr. Cartwright brings to the Board of Directors an accounting and financial reporting background as well as leadership and management experience.

*Cary Grossman*, age 57, has served as a member of the Board of Directors and chair of the Audit Committee since December 2004. He is the founder and President of Shoreline Capital Advisors, Inc., an investment and merchant banking firm he founded in 2010. He was the Chief Financial Officer of Blaze Recycling & Metal, LLC from July 2007 through November 2009. Mr. Grossman was the Executive Vice President of Gentium, S.P.A, an Italy-based biopharmaceutical company, from August 2004 until February 2007. During that period he served as Chief Financial Officer, and later as its Chief Operating Officer. Mr. Grossman was also a co-founder and officer of two special purpose acquisition companies during 2004-2006; Coastal Bancshares Acquisition Corp. and St. Bernard Software, Inc. From April 2004 to January 10, 2005, he was also its Chief Financial Officer. From 2002 until 2003 he served as Chief Financial Officer at U.S. Liquids, Inc., at the time an AMEX-listed environmental services company. Mr. Grossman left U.S. Liquids, Inc. in 2003 as a result of the acquisition of three of its businesses and was President and Chief Executive Officer of the acquiring company, ERP Environmental Services, until November 2003. From 1997 until 2002, Mr. Grossman served Pentacon, Inc., at the time a NYSE-listed company, as a board member and as Chairman of the Board of Directors. From 1991 until 2002, Mr. Grossman was the Chief Executive Officer of McFarland, Grossman & Company, Inc., an investment banking and financial advisory firm. Mr. Grossman practiced public accounting from 1977-1991. He is a Certified Public Accountant and earned a BBA in accounting from The University of Texas.

Mr. Grossman brings to the Board of Directors accounting and financial reporting expertise as well as leadership experience having served as the Chief Financial Officer and other executive positions for various companies and having worked for more than a decade in public accounting.

*Tilman J. Falgout, III*, age 61, is currently the Chairman of the board of directors of America's Car-Mart, a position he has held since 2004, and has been a director of that company since 1992. He served as the CEO of America's Car-Mart from 2002 until 2007 after serving in various capacities, Executive Vice President and General Counsel since 1995. Prior to joining America's Car-Mart, Mr. Falgout practiced corporate and securities law at Stumpf & Falgout, where he was a founder and managing partner of the firm.

Mr. Falgout's qualifications to serve on the Board of Directors include his corporate governance and operational management experience, as well as his legal expertise. Mr. Falgout also brings a background in organizational leadership and experience serving as the Chairman and CEO of a public company.

*Mark T. Hilz*, age 52, is the Company's President and Chief Executive Officer and has served in those roles since 2005. In addition, Mr. Hilz was named as the Company's Chief Operating Officer in November. Prior to serving in these executive officer roles with the Company, Mr. Hilz served since 2000 as the President and CEO of Internetwork Experts, Inc., the Company's subsidiary that was merged into and with the Company in 2005. He has also served as President and CEO of PC Service Source, a technology service logistics company.

Mr. Hilz's day-to-day leadership and involvement with the Company, and his knowledge of, and many years of experience with, the Company's operations and financial position, as well as his many years of relevant technology industry experience, make him well qualified to serve on our Board of Directors.

*Robert D. Repass*, age 50, is currently a partner with Maxwell, Locke & Ritter, a privately held business services consulting and professional services firm. Mr. Repass began his career in public accounting with Price Waterhouse (now PricewaterhouseCoopers) in 1982, and served as the managing partner of the Austin, Texas office from 1997 to 2000. He was a partner with TL Ventures in 2000 and 2001 and served as Chief Financial Officer for Motion Computing, Inc. from 2002 until 2009. He has served as a director and as the audit committee chair for numerous private companies, as well as non-profit organizations. He formerly served as the chair of the audit committee of Bindview Development from 2003 to 2006 when it was acquired by Symantec Corporation. He currently serves as the audit committee chair for Multimedia Games, Inc., a software and systems company. He has also served on the boards of numerous civic organizations.

Mr. Repass' qualifications to serve on the Board of Directors include his experience and expertise in accounting, corporate governance, venture capital and finance and within the technology industry.

*William M. Sams*, age 73, currently is a Managing Partner and Principal of the Marlin Sams Fund, LP. From 1981 until 2000, Mr. Sams was the President and Chief Investment Officer of FPA Paramount Fund, Inc., as well as Executive Vice President to both First Pacific Advisors, Inc. and FPA Perennial Fund, Inc. From 1966 to 1981 Mr. Sams was portfolio manager of various mutual funds. He presently serves on the board of directors of Unifi, Inc. and America's Car-Mart, Inc.

Mr. Sams' qualifications to serve on the Board of Directors include his finance and investment experience and expertise as well as his experience serving as a director for two public companies.

#### **Executive Officers**

The Company's executive officers serve until resignation or removal by the Board of Directors. Set forth below is certain information about the Company's executive officers.

*James H. Long* – See Nominees for Director.

*Mark T. Hilz* – See Nominees for Director.

*Brian Fontana*, age 53, served as our Chief Financial Officer from January 2005 to August 2010. Mr. Fontana has an extensive financial management background that includes the management of the accounting, finance, investor relations, internal information systems and legal functions for large, complex organizations, including organizations that were executing strategies for rapid expansion through acquisitions.

*Philip Rydzewski*, age 48, has served as the Company's Chief Financial Officer since December 2010. Previously, from 2007 to 2008 Mr. Rydzewski was the Chief Accounting Officer for HealthMarkets, Inc., a health and life insurance underwriter that maintained its status as an SEC registrant although majority owned by private equity firms. From 2004 to 2007 he was the Vice President of Finance for Catalyst Health Solutions, Inc., a NASDAQ listed pharmacy benefit management company. From 2001 to 2004 he was Chief Financial Officer, Treasurer and Secretary for HMS Holdings Corp., a healthcare technology company. Most recently in 2009 and 2010, Mr. Rydzewski provided a variety of CFO services to public and private companies on a consulting basis. Previously, from 1990 until 1998, he was Vice President Finance and Corporate Controller for PHP Healthcare Corporation, a NYSE listed diversified healthcare services provider. From 1985 to 1990, Mr. Rydzewski was in the auditing and accounting services practice with KPMG LLP. Mr. Rydzewski holds an inactive CPA license and earned an undergraduate degree in Accounting from Georgetown University.

#### **Family Relationships**

There are no family relationships among any of our directors and executive officers.

#### **Section 16(a) Beneficial Ownership Reporting Compliance**

Pursuant to Section 16(a) of the Exchange Act, the Company's directors, executive officers, and stockholders who own 10% or more of the Common Stock (the "Reporting Persons") are required to file reports of stock ownership and changes in ownership of Common Stock with the SEC and to furnish the Company with copies of all such reports they file. The Company believes that, for fiscal year 2010, all the Reporting Persons complied with all applicable filing requirements except for the following:

- Mr. Rydzewski did not file a Form 3 upon his appointment as the Company's Chief Financial Officer. Rather, he filed his Form 3 once he was awarded shares of the Company's Common Stock.
- Mr. Fontana did not file a Form 4 to report the withholding of restricted stock to satisfy his tax withholding obligation upon the vesting of his restricted stock on March 27, April 16 and May 12, 2010, and did not file a Form 4 to report his disposition of his Common Stock on August 27, 2010.
- Mr. Hilz filed a Form 4 late to report the withholding of restricted stock to satisfy his tax withholding obligation upon the vesting of his restricted stock on March 27, April 16 and May 12, 2010.
- Mr. Klotz filed a Form 4 late to report the withholding of restricted stock to satisfy his tax withholding obligation upon the vesting of his restricted stock on May 12, 2010.
- Mr. Lawhorn filed a Form 4 late to report the withholding of restricted stock to satisfy his tax withholding obligation upon the vesting of his restricted stock on May 12, 2010.
- Mr. Long filed a Form 4 late to report the withholding of restricted stock to satisfy his tax withholding obligation upon the vesting of his restricted stock on March 27, April 16 and May 12, 2010.

#### **Code of Ethics**

We have adopted a code of ethics that applies to the Chief Executive Officer, Chief Financial Officer, Controller and persons performing similar functions. We have also adopted a code of ethics applicable to all employees. We have posted the codes of ethics on our Internet website at Internet address: <http://www.inxi.com>. Copies of the codes may be obtained free of charge from the Company's website at the above Internet address. We intend to disclose any amendments to or waivers from a provision of the code of ethics that applies to the Chief Executive Officer, Chief Financial Officer or Controller by posting such information on our website at the above address.

#### **Committees of Our Board of Directors**

The Board of Directors has three (3) standing committees: an audit committee (the "Audit Committee"), a compensation committee (the "Compensation Committee"), and a nominating committee (the "Nominating Committee").

##### *Audit Committee*

The Audit Committee, which has been established in accordance with the Securities Exchange Act of 1934, as amended, consists of Messrs. Cartwright, Chadwick and Grossman, each of whom is "independent" as such term is defined for audit committee members by the listing standards of The Nasdaq Stock Market, Inc. (the "Manual"). The Board of Directors has determined that Mr. Grossman is an "audit committee financial expert" as defined in the rules promulgated by the SEC.

The responsibilities of the Audit Committee are set forth in the federal securities laws, the Manual, and the written charter adopted by the Board of Directors and include, but are not limited to:

- reviewing the financial reports and other financial and related information provided by the Company to any governmental body or the public;
- reviewing the Company's systems of internal controls regarding finance, accounting, legal compliance and ethics that management and the Board have established;
- reviewing the Company's auditing, accounting and financial reporting processes generally;
- appointing, compensating and overseeing the work of any registered public accounting firm employed by the Company, including resolution of disagreements between management and the auditor regarding financial reporting, for the purpose of preparing or issuing an audit report; and
- approving audit services and most non-audit services provided by the Company's independent auditors.

The Audit Committee has held discussions with management and Grant Thornton, LLP ("Grant Thornton"), the Company's independent auditors, regarding the audited financial statements for the year ended December 31, 2010. The Audit Committee reviewed with the independent auditors who are responsible for expressing an opinion on the conformity of the audited financial statements with generally accepted accounting principles, their judgments as to quality, not just the acceptability, of the Company's accounting functions and such other matters as are required to be discussed with the Audit Committee under generally accepted auditing standards. The Audit Committee has also discussed with Grant Thornton the matters required to be discussed by the Statement of Auditing Standards No. 61 (Communication with Audit Committees), as amended, and by the Statement of Auditing Standards No. 90 (Audit Committee Communications).

In addition, the Audit Committee has received a written statement from Grant Thornton describing all relationships between the independent auditors and the Company that may impact their objectivity and independence as required by Public Company Accounting Oversight Board Rule 3526 (Communication with Audit Committees Concerning Independence) and has discussed with Grant Thornton matters relating to its independence, including review of audit and non-audit fees and any relationships that may impair its independence and satisfied itself as to their independence.

Based on the foregoing, the Audit Committee of the Company has recommended to the Board of Directors that the audited financial statements of the Company be included in the Company's 2010 Annual Report for filing with the Securities and Exchange Commission.

#### *Compensation Committee*

The Compensation Committee consists of Messrs. Cartwright, Chadwick and Grossman, all of whom are non-employee directors, and each of whom is "independent" as such term is defined by the Manual. The functions of the Compensation Committee include reviewing and approving the goals and objectives relevant to compensation of our executive officers, evaluating our executive officers' performance in light of those goals and objectives and determining and approving our executive officers' compensation levels and compensation plan structures based on this evaluation. The responsibilities of the Compensation Committee are set forth in further detail in a written charter adopted by the Board of Directors. During 2010, no director or executive officer of the Company served on the compensation committee or the board of directors of any company for which Messrs. Cartwright, Chadwick and Grossman served as executive officers or directors.

#### *Nominating Committee*

The Nominating Committee consists of Messrs. Cartwright, Chadwick and Grossman, all of whom are non-employee directors, each of whom is "independent" as such term is defined by the Manual. The responsibilities of the Nominating Committee are set forth in the written charter adopted by the Board of Directors and include, but are not limited to:

- establishing criteria for determining director independence, which, at a minimum, shall (i) comply with the definition of an "independent director" in the listing standards of the Manual, (ii) qualify as an "outside director" under Section 162(m) of the Internal Revenue Code, as amended, and (iii) meet the requirements of a "nonemployee director" for purposes of Section 16 of the Securities Exchange Act of 1934, as amended;
- evaluating the qualifications and performance of the incumbent directors that desire to continue their service on the Board of Directors;
- identifying and evaluating new candidates for election to the Board of Directors where there is no qualified and available incumbent director;
- recommending to the Board of Directors candidates to fill vacancies on the Board of Directors; and
- seeking out and evaluating candidates to serve as Board members, and considering candidates submitted by stockholders of the Company in accordance with the notice provisions and procedures set forth in the by-laws of the Company.

## Item 11. Executive Compensation

### Summary Compensation Table

The following table sets forth information about compensation we paid or awarded for services rendered during the fiscal year ended December 31, 2010 to our Executive Chairman, our Chief Executive Officer and President and our former Chief Financial Officer (the "Named Executive Officers").

Name and Principal Position	Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Non-Qualified Deferred Compensation Earnings	All Other Compensation	Total
		(\$)	(\$)	\$(1)	\$(1)	(\$)	\$(2)	\$(3)	(\$)
James H. Long	2010	\$ 300,000	\$ 130,911	\$ 480,000	\$ —	\$ —	\$ —	\$ —	\$ 910,911
Executive Chairman	2009	253,000	43,170	148,360	—	—	—	—	444,530
Mark T. Hilz	2010	300,000	130,911	360,000	—	—	—	—	790,911
Chief Executive Officer and President	2009	253,000	43,170	208,282	—	—	—	—	504,452
Brian Fontana	2010	242,000	12,500	222,560	69,380	—	—	287,189(4)	833,629
Former Vice President and Chief Financial Officer	2009	242,000	52,945	151,358	—	—	—	—	466,303

- (1) Dollar amounts in the Stock Awards and Option Awards columns represent the grant date fair value of the award computed in accordance with FASB ASC Topic 718, assuming all conditions are met. For a discussion of valuation assumptions, see Note 8 to our consolidated financial statements included in Part II, Item 8.
- (2) The Company's Named Executive Officers do not participate in any defined benefit, actuarial pension plan or any other post-retirement supplementary compensation plans.
- (3) Amounts exclude the value of perquisites and personal benefits which are less than \$10,000. The cost of employee benefits under plans available to all Company employees are excluded. Refer to the All Other Compensation Table below for details of amounts paid or incurred as disclosed in the Summary Compensation Table.
- (4) In connection with his resignation, Mr. Fontana was paid \$277,000 as severance and \$10,189 for paid time off.

### Narrative Disclosure to Summary Compensation Table

During the 2010 fiscal year in accordance with our compensation objectives and policies, our Named Executive Officers received compensation comprised of a base salary, a quarterly or annual bonus award and a grant of restricted stock and/or restricted stock units.

Under the terms of their respective employment agreements (collectively, the "Executive Employment Agreements"), Messrs. Long and Hilz were entitled to an annual base salary for 2010 of \$300,000 each, plus other bonuses, the amounts and payment of which are within the discretion of the Compensation Committee. The agreements with Messrs. Long and Hilz also include special bonus plan provisions that may be changed or eliminated at the Company's sole discretion. The Executive Employment Agreements generally provide that the executive officer will not, for the term of his employment and for a period of either twelve or eighteen months, whichever the case may be, following the end of such executive officer's employment with the Company, compete with the Company, disclose any of the Company's confidential information, solicit any of the Company's employees or customers or otherwise interfere with the Company's business relations.

Mr. Fontana voluntarily resigned as the Vice President and Chief Financial Officer of the Company effective as of August 27, 2010. In connection with Mr. Fontana's departure, the Company and Mr. Fontana entered into a Separation Agreement and General Release, dated August 27, 2010 (the "Separation Agreement"). Pursuant to the terms of the Separation Agreement, Mr. Fontana received a lump sum payment of \$277,000 and all accrued salary. Further, the Company agreed that the vesting dates of all of Mr. Fontana's shares of restricted stock awarded under his Restricted Stock Award Agreements were to be accelerated so that all 42,800 unvested shares fully vested on August 27, 2010, and that the vesting dates of all of Mr. Fontana's stock options granted under his Incentive Stock Option Agreements were to be accelerated so that all 26,000 unvested options fully vested on August 27, 2010.

#### Outstanding Equity Awards at Fiscal Year-End

The following table details outstanding stock options awards classified as exercisable and unexercisable as of December 31, 2010 for each Named Executive Officer.

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan: Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares of Stock that have not Vested (#)	Market Value of Shares of Stock that have not Vested (\$)	Equity Incentive Plan: Number of Unearned Shares that have not Vested (#)	Equity Incentive Plan: Market Value of Unearned Shares that have not Vested (\$)
James H. Long	—	—	—	\$ —	—	12,600	\$ 90,846(1)	—	—
						30,400	73,568(2)	—	—
						9,600	45,120(3)	—	—
						64,000	384,000(4)	—	—
Mark T. Hilz	387,582	—	—	1.10	3/1/2012	12,600	90,846(1)	—	—
	40,816	—	—	1.84	9/1/2013	36,480	88,282(5)	—	—
	3,537	—	—	4.14	10/2/2013	11,250	54,144(6)	—	—
						48,000	288,000(7)	—	—
Brian Fontana	45,000	—	—	7.65	1/2/2015	—	—	—	—
	4,000	—	—	4.50	11/2/2015	—	—	—	—
	40,000	—	—	6.58	5/2/2016	—	—	—	—
	35,000	—	—	9.58	3/6/2017	—	—	—	—

- (1) The stock awards were granted on April 16, 2008 and vest in 4,200 share increments April 16, 2011; April 16, 2012; April 16, 2013.
- (2) The stock awards were granted on March 27, 2009 and vest in 7,600 share increments on March 27, 2011; March 27, 2012; March 27, 2013; March 27, 2014.
- (3) The stock awards were granted on May 12, 2009 and vest in 2,400 share increments on May 12, 2011; May 12, 2012; May 12, 2013; May 12, 2014.
- (4) The restricted stock units were granted on November 3, 2010 and vest in 16,000 share increments on November 3, 2011; November 3, 2012; November 3, 2013; November 3, 2014.
- (5) The stock awards were granted on March 27, 2009 and vest in 9,120 share increments on March 27, 2011; March 27, 2012; March 27, 2013; March 27, 2014.
- (6) The stock awards were granted on May 12, 2009 and vest in 2,880 share increments on May 12, 2011; May 12, 2012; May 12, 2013; May 12, 2014.
- (7) The restricted stock units were granted on November 3, 2010 and vest in 12,000 share increments on November 3, 2011; November 3, 2012; November 3, 2013; November 3, 2014.

## Director Compensation

The quarterly retainer received by each non-employee director is \$5,000. Each non-employee director receives a \$1,000 fee for each Board and Committee meeting including the Audit, Compensation, and Nominating Committee meetings they attend in person as well as reasonable out-of-pocket expenses incurred to attend the meetings. For telephonic board meetings each non-employee board member in attendance receives a \$500 fee. In addition, the chairperson of the Audit Committee receives an additional \$4,000 quarterly retainer. An additional \$1,000 fee per special committee meeting is paid to any non-employee director that is serving as the chairperson of such special committee. In addition to the foregoing, Mr. Grossman was paid \$67,500 as special compensation for his additional work due to the Company's restatement of its financial statements and the Company's search for a new Chief Financial Officer.

Non-employee directors receive a fully vested Common Stock grant based on the number of shares equal to \$30,000 upon re-election to the Board, valued as of the date of re-election. In 2010, the Company was not able to issue Common Stock to its non-employee directors so it paid to such directors \$30,000 in cash.

The following table provides the compensation of our non-employee directors for the fiscal year ended December 31, 2010:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)(1)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Non- Qualified Deferred Compensation Earnings (\$)(2)	All Other Compensation (\$)(3)	Total (5)
John B. Cartwright	\$ 69,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 69,000
Donald R. Chadwick	63,000	—	—	—	—	—	63,000
Cary M. Grossman	144,500	—	—	—	—	—	144,500

(1) Dollar amounts in the Stock Awards and Option Awards columns represent the grant date fair value of the award computed in accordance with FASB ASC Topic 718, assuming all conditions are met. For a discussion of valuation assumptions, see Note 8 to our consolidated financial statements included in Part II, Item 8.

(2) The Company's directors do not participate in any defined benefit, actuarial pension plan or any other post-retirement supplementary compensation plans.

(3) Amounts exclude the value of perquisites and personal benefits which are less than \$10,000.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The following table sets forth information regarding the beneficial ownership of the Common Stock as of April 30, 2011 by:

- each person, or group of affiliated persons, known by the Company to be the beneficial owner of more than 5% of its outstanding Common Stock;
- each of the nominees and directors;
- each executive officer named in the summary compensation table under “EXECUTIVE COMPENSATION” below; and
- all of the Company’s directors and executive officers as a group.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership (1)	Percent of Class
James H. Long	1,903,417(2)	17.1%
John B. Cartwright	37,088(3)	*
Donald R. Chadwick	55,396(4)	*
Cary M. Grossman	21,383(5)	*
Brian Fontana	124,086(6)	1.1%
Mark T. Hilz	511,584(7)	4.6%
Tilman J. Falgout, III	20,000	*
Robert D. Repass	—	—
William M. Sams	830,000	7.5%
All executive officers and directors	3,502,954(8)	31.5%

\* Less than 1%

- (1) Beneficially owned shares include shares over which the named person exercises either sole or shared voting power or sole or shared investment power. It also includes shares the named person has the right to acquire within 60 days by the exercise of any right or option. Unless otherwise noted, all shares are owned of record and beneficially by the named person.
- (2) Includes 2,800 shares held in a custodial account and 3,150 shares in a closely held limited liability company.  
Includes 8,400 non-vested Restricted Stock shares that were granted on April 16, 2008, which vests in 4,200 share increments on April 16, 2012; April 16, 2013.  
Includes 22,800 non-vested Restricted Stock shares that were granted on March 27, 2009, which vests in 7,600 share increments on March 27, 2011; March 27, 2012; March 27, 2013; March 27, 2014.  
Includes 9,600 non-vested Restricted Stock shares that were granted on May 12, 2009, which vests in 2,400 share increments on May 12, 2011; May 12, 2012; May 12, 2013; May 12, 2014.
- (3) Includes 25,000 shares that may be acquired upon exercise of currently exercisable options.
- (4) Includes 22,686 shares that may be acquired upon exercise of currently exercisable options.
- (5) Includes 15,000 shares that may be acquired upon exercise of currently exercisable options.
- (6) Includes 124,000 shares that may be acquired upon exercise of currently exercisable options.
- (7) Includes 431,935 shares that may be acquired upon exercise of currently exercisable options.  
Includes 8,400 non-vested Restricted Stock shares that were granted on April 16, 2008, which vests in 4,200 share increments on April 16, 2012; April 16, 2013.  
Includes 27,360 non-vested Restricted Stock shares that were granted on March 27, 2009, which vests in 9,120 share increments on March 27, 2011; March 27, 2012; March 27, 2013; March 27, 2014.  
Includes 11,520 non-vested Restricted Stock shares that were granted on May 12, 2009, which vests in 2,880 share increments on May 12, 2011; May 12, 2012; May 12, 2013; May 12, 2014.

**Item 13. *Certain Relationships and Related Transactions, and Director Independence***

Pursuant to Rule 5630(a) of the Manual, the Audit Committee approves all transactions with related parties required to be disclosed under SEC Regulation S-K, Item 404. Related parties include the Company's directors, executive officers, and stockholders known by us to be the beneficial owner of more than 5% of our Common Stock, and their respective immediate family members. To help identify related party transactions, we require our directors and executive officers to complete a director and officer questionnaire identifying any transaction with us in which the director or officer or their immediate family member has an interest. There were no related party transactions in 2009 and 2010 requiring Audit Committee approval under Rule 5630(a).

The Company has no parent company as discussed in Item 404(d)3.

**Item 14. *Principal Accountant Fees and Services***

On June 4, 2009, the Company dismissed Grant Thornton LLP ("Grant Thornton") as the Company's independent registered public accounting firm. The decision to dismiss Grant Thornton was approved by the Audit Committee. On June 4, 2009, the Company engaged PricewaterhouseCoopers LLP ("PricewaterhouseCoopers") to serve as its new independent registered public accounting firm for the fiscal year ended December 31, 2009. The decision to engage PricewaterhouseCoopers was approved by the Audit Committee. On August 24, 2010, the Audit Committee dismissed PricewaterhouseCoopers as the Company's independent registered public accounting firm. PricewaterhouseCoopers did not render any audit reports on the Company's consolidated financial statements during the period from June 4, 2009 through August 24, 2010. On August 24, 2010, the Audit Committee engaged Grant Thornton to serve as its independent registered public accounting firm for the fiscal year ended December 31, 2009.

The following information sets forth the aggregate fees billed or to be billed by Grant Thornton and PricewaterhouseCoopers for services performed for the fiscal years 2009 and 2010. The Audit Committee has reviewed the audit and non-audit fees that we paid to the independent accountants for purposes of considering whether such fees are compatible with maintaining the auditor's independence.

*Audit Fees.* Estimated fees billed for services rendered by Grant Thornton for the 2008 restatement and 2009 and 2010 audits of our financial statements included in this annual report on Form 10-K and reviews by Grant Thornton of financial statements included in this Form 10-K and in our 2010 quarterly reports on Form 10-Q were \$4,491,848. All of the aforementioned services performed by Grant Thornton were performed concurrently during 2010 through the filing date of this Form 10-K. Estimated fees billed for services rendered by PricewaterhouseCoopers for the 2009 audit and reviews of our 2009 second and third quarter financial statements were \$1,476,571.

*Audit-Related Fees.* We did not retain Grant Thornton or PricewaterhouseCoopers for any audit related services in 2009 and 2010, and there were no fees for audit-related services during those years.

*Tax Fees.* We did not retain Grant Thornton for any tax related services in 2009 and 2010, and there were no fees for tax-related services during those years. We retained PricewaterhouseCoopers for tax related services with fees totaling \$147,525 and \$109,760 in 2009 and 2010, respectively.

*All Other Fees.* There were no fees rendered by Grant Thornton under the all other services category in 2009 and 2010. Fees were rendered by PricewaterhouseCoopers in connection with the subscription to Comperio, a technical accounting software service, of \$1,500 and \$1,800 in 2009 and 2010, respectively.

Our Audit Committee must pre-approve all audit and non-audit services that we receive from our independent accountants. This pre-approval authority may be delegated to a single member of the Audit Committee and then reviewed by the entire Audit Committee at the committee's next meeting. Approvals of non-audit services will be publicly disclosed in our periodic reports filed with the SEC. For 2010, the Audit Committee pre-approved 100% of the 2010 audit and non-audit services we received from our independent accountants.

**PART IV**

**Item 15. *Exhibits and Financial Statement Schedules***

(a)1. Financial Statements

The Index to Financial Statements and Financial Statement Schedule on page 43 is incorporated herein by reference as the list of financial statements required as part of this report.

2. Financial Statement Schedule

The Index to Financial Statements and Financial Statement Schedule on page 43 is incorporated herein by reference as the list of financial statement schedules required as part of this report.

3. Exhibits

The exhibit list in the Index to Exhibits is incorporated herein by reference as the list of exhibits required as part of this report.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, June 3, 2011.

INX INC.  
(Registrant)

By: /s/ MARK T. HILZ  
Mark T. Hilz  
*Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ JAMES H. LONG</u> James H. Long	Executive Chairman and Chairman of the Board of Directors	June 3, 2011
<u>/s/ MARK T. HILZ</u> Mark T. Hilz	President and Chief Executive Officer	June 3, 2011
<u>/s/ PHILIP RYDZEWSKI</u> Philip Rydzewski	Chief Financial Officer	June 3, 2011
<u>/s/ LARRY LAWHORN</u> Larry Lawhorn	Controller and Chief Accounting Officer	June 3, 2011
<u>/s/ DONALD R. CHADWICK</u> Donald R. Chadwick	Director	June 3, 2011
<u>/s/ CARY GROSSMAN</u> Cary Grossman	Director	June 3, 2011
<u>/s/ JOHN B. CARTWRIGHT</u> John B. Cartwright	Director	June 3, 2011

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>Filed Herewith or Incorporated by Reference From:</b>
3.1	Amended and Restated Bylaws of the Company	Filed herewith
3.2	Certificate of Incorporation of the Company	Exhibit 3.2 to Amendment 1 to Form S-1, Registration No. 333-09789, filed September 19, 1996
3.3	Certificate of Amendment to Certificate of Incorporation of Allstar Systems, Inc., dated June 24, 1997	Exhibit 3.4 to Amendment 5 to Form S-1, Registration No. 333-09789, filed June 26, 1997
3.4	Certificate of Amendment to Certificate of Incorporation of Allstar Systems, Inc., dated March 5, 1999	Exhibit 3.3 to Form 8-A, Registration No. 001-31949, filed December 29, 2003
3.5	Certificate of Amendment to Certificate of Incorporation of Allstar Systems, Inc. dated July 10, 2000	Exhibit 3.4 to Form 8-A, Registration No. 001-31949, filed December 29, 2003
3.6	Certificate of Ownership and Merger	Exhibit 3.1 to Form 8-K, Registration No. 001-31949, dated January 6, 2006
4.1	Specimen Common Stock Certificate	Exhibit 4.1 to Amendment 2 to Form S-1, Registration No. 333-09789, filed October 3, 1996
10.1	Amended & Restated Allstar Systems, Inc. 1996 Incentive Stock Plan, dated effective July 1, 1997	Exhibit 10.9 to Form 10-K Registration No. 001-31949, filed March 12, 2004
10.2	Amended & Restated I-Sector Corp. Stock Incentive Plan, dated effective July 28, 2003	Exhibit 10.10 to Form 10-K Registration No. 001-31949, filed March 12, 2004
10.3	Amended & Restated Internetwork Experts, Inc., Stock Incentive Plan dated effective August 1, 2003	Exhibit 10.11 to Form 10-K Registration No. 001-31949, filed March 12, 2004
10.4	First Amendment to I-Sector Corporation Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, dated January 4, 2005
10.5	Second Amendment to I-Sector Corporation Incentive Plan, as amended and restated	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, dated March 21, 2005
10.6	Third Amendment to I-Sector Corporation Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, dated May 17, 2005
10.7	Fourth Amendment to I-Sector Corporate Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed June 6, 2006
10.8	Fifth Amendment to I-Sector Corporate Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed May 15, 2007
10.9	Sixth Amendment to I-Sector Corporate Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed May 13, 2008
10.10	Seventh Amendment to INX Inc. Incentive Plan	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed May 12, 2009.
10.11	INX Inc. 2008 Employee Stock Purchase Plan	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, filed May 13, 2008
10.12	Employment Agreement by and between INX Inc. and James H. Long, dated November 3, 2010	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed November 4, 2010
10.13	Confidentiality Agreement by and between INX Inc. and James H. Long, dated November 3, 2010	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, filed November 4, 2010
10.14	Employment Agreement by and between Internetworking Sciences, Inc., a predecessor in interest to INX Inc. and Mark T. Hilz, dated July 5, 2000	Exhibit 10.3 to Form 8-K, Registration No. 001-31949, filed November 4, 2010
10.15	Confidentiality Agreement by and between Internetworking Sciences, Inc., a predecessor in interest to INX Inc. and Mark T. Hilz, dated July 5, 2000	Exhibit 10.4 to Form 8-K, Registration No. 001-31949, filed November 4, 2010
10.16	Employment Agreement by and between INX Inc. and Philip Rydzewski, dated December 29, 2010	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed December 30, 2010
10.17	Confidentiality Agreement by and between INX Inc. and Philip Rydzewski, dated December 29, 2010	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, filed December 30, 2010

10.18	Form of Change in Control Retention Agreement	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, dated December 8, 2006
10.19	Form of First Amendment to Change in Control Retention Agreement	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, dated December 21, 2007
10.20	Credit Agreement by and among Castle Pines Capital LLC, I-Sector Corporation, Valerent, Inc., InterNetwork Experts, Inc., and Stratasoftware, Inc. dated December 27, 2005	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, dated May 4, 2007
10.21	Credit Agreement by and among Castle Pines Capital LLC, INX, Inc., and Valerent, Inc. dated April 30, 2007	Exhibit 10.1 to Form 10-Q, Registration No. 001-31949, dated August 15, 2005
10.22	Acquisition Facility Amendment to Amended and Restated Credit Agreement by and among Castle Pines Capital LLC, and INX, Inc. dated August 1, 2007	Exhibit 10.2 to Form 10-Q, Registration No. 001-31949, dated August 6, 2007
10.23	Amended and Restated Financial Covenants Amendment to Amended and Restated Credit Agreement by and between INX Inc. and Castle Pines Capital LLC dated August 31, 2007	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, filed September 4, 2007
10.24	Amendment and Joinder to Credit Agreement by and among Select, Inc. and Castle Pines Capital LLC dated August 31, 2007	Exhibit 10.3 to Form 8-K, Registration No. 001-31949, filed September 4, 2007
10.25	Amendment to Amended and Restated Credit Agreement by and among INX Inc., Select, Inc., and Castle Pines Capital LLC	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed June 4, 2008
10.26	Amendment to Amended and Restated Credit Agreement and Amendment to Amended and Restated Financial Covenants Amendment to Amended and Restated Credit Agreement between INX Inc. and Castle Pines Capital LLC	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed December 23, 2009
10.27	Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.4 to Form 10-K, Registration No. 001-31949, dated March 12, 2004
10.28	Amendment One, dated January 28, 2002 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.5 to Form 10-K, Registration No. 001-31949, dated March 12, 2004
10.29	Amendment Two, dated November 21, 2002 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.6 to Form 10-K, Registration No. 001-31949, dated March 12, 2004
10.30	Amendment Three, dated January 20, 2003 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.7 to Form 10-K, Registration No. 001-31949, dated March 12, 2004
10.31	Amendment Four, dated January 16, 2004 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.8 to Form 10-K, Registration No. 001-31949, dated March 12, 2004
10.32	Amendment Five, dated January 27, 2005 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.23 to Form 10-K, Registration No. 001-31949, dated March 27, 2006
10.33	Amendment Six, dated April 18, 2005 to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.24 to Form 10-K, Registration No. 001-31949, dated March 27, 2006
10.34	Amendment Seven, dated March 2, 2006, to Systems Integrator Agreement by and between Cisco Systems, Inc. and InterNetwork Experts, Inc., dated November 13, 2001	Exhibit 10.25 to Form 10-K, Registration No. 001-31949, dated March 27, 2006
10.35	Amendment Eight, dated March 20, 2006, to Systems Integrator Agreement by and between Cisco Systems, Inc. and INX Inc. (formerly InterNetwork Experts, Inc.), dated November 13, 2001	Exhibit 10.26 to Form 10-K, Registration No. 001-31949, dated March 27, 2006
10.36	Amendment Nine, dated November 13, 2006, to Systems Integrator Agreement by and between Cisco Systems, Inc. and INX Inc. (formerly InterNetwork Experts, Inc.), dated November 13, 2001	Exhibit 10.30 to Form 10-K, Registration No. 001-31949, dated March 7, 2008

10.37	Amendment Ten, dated January 25, 2007 to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Exhibit 10.37 to Form 10-K, Registration No. 001-31949, dated March 7, 2008
10.38	Amendment Eleven, dated April 10, 2007 to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Exhibit 10.38 to Form 10-K, Registration No. 001-31949, dated March 7, 2008
10.39	Amendment dated December 13, 2007 to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Exhibit 10.39 to Form 10-K, Registration No. 001-31949, dated March 7, 2008
10.40	Amendment dated October 1, 2007, to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Exhibit 10.40 to Form 10-K, Registration No. 001-31949, dated March 7, 2008
10.41	Renewal Amendment, effective February 11, 2009, to the Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc. dated November 13, 2001	Exhibit 10.1 to Form 10-Q, Registration No. 001-31949, filed May 12, 2009.
10.42	Addendum dated June 29, 2010, to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Filed herewith
10.43	Amendment Twelve dated October 19, 2010, to Systems Integrator Agreement by and between Cisco Systems, Inc. and Internetwork Experts, Inc., dated November 13, 2001	Filed herewith
10.44	Office Lease by and between Equastone Kirkwood, LP and INX Inc.	Exhibit 10.2 to Form 8-K, Registration No. 001-31949, filed July 20, 2009.
10.45	Asset Purchase Agreement by and among INX Inc., Access Flow, Inc., Steve Kaplan and Gary Lamb dated June 6, 2008	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed June 9, 2008
10.46	Asset Purchase Agreement by and among INX Inc., NetTek Technology Consultants, Inc., Ethan F. Simmons, Matthew J. Field, and Michael P. DiCenzo dated November 14, 2008	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed November 18, 2008
10.47	First Amendment to Asset Purchase Agreement by and among INX Inc., NetTek Technology Consultants, Inc., Ethan F. Simmons, Matthew J. Field, and Michael P. DiCenzo dated June 19, 2009.	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed June 24, 2009
10.48	Asset Purchase Agreement by and among INX Inc., AdvancedNetworX, Inc., Mark Alexander, Robert Roesch, Gary Clevenger, Deborah Shaw, Sherri McEvoy, Kevin Jones, Robert Timm, and Larry Blackwood dated July 17, 2009	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed July 20, 2009.
10.49	Asset Purchase Agreement by and among INX Inc., Marketware Inc., and Timothy Darryl Johnson dated December 31, 2009	Exhibit 10.1 to Form 8-K, Registration No. 001-31949, filed January 5, 2010
10.50	Lease Agreement between Vantage Development #21, Inc. and I-Sector Corporation dated April 9, 2004	Filed herewith
10.51	First Amendment to Lease Agreement between Vantage Development #21, Inc. and INX Inc., dated June 9, 2006	Filed herewith
10.52	Second Amendment to Lease Agreement between Vantage Development #21, Inc. and INX Inc., dated July 19, 2010	Filed herewith
21.1	List of Subsidiaries of the Company	Exhibit 21.1 to Form 10-K, Registration No. 001-31949, dated March 10, 2009
23.1	Consent of Grant Thornton LLP	Filed herewith
31.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer	Filed herewith
31.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer	Filed herewith
32.1	Section 1350 Certification of Chief Executive Officer	Filed herewith
32.2	Section 1350 Certification of Chief Financial Officer	Filed herewith

AMENDED AND RESTATED  
BYLAWS  
OF INX INC.  
(a Delaware Corporation)

ARTICLE I

OFFICES

Section 1. PRINCIPAL OFFICE. The principal office will be in Lewisville, Texas, at the Corporation's offices located at 1955 Lakeway Drive, Suite 220, Lewisville, Texas 75057, or such other location in Lewisville, Texas, as the Board of Directors may designate by resolution, from time to time.

Section 2. OTHER OFFICES. The Corporation may also have offices at such other places within or without the State of Delaware as the board of directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE OF MEETINGS. All meetings of the stockholders will be held at the principal office of the Corporation, or at such other place within or without the State of Delaware as may be determined by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. ANNUAL MEETINGS. An annual meeting of Stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as may be designated by resolution of the board of directors from time to time; provided that each successive annual meeting shall be held on a date within 13 months after the date of the preceding annual meeting. Only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting given by or at the direction of the board of directors, (b) otherwise properly brought before the meeting or at the direction of the board of directors, or (c) otherwise properly brought before the meeting by a stockholder of the Corporation. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation, no less than 60 days nor more than 180 days prior to the anniversary date of the immediately preceding annual meeting; provided, however, that in the event that the date of the annual meeting is more than 60 days later than the anniversary date of the immediately preceding annual meeting, notice by the stockholder to be timely must be received not later than the close of business on the tenth day following the earlier of the date on which a written statement setting forth the date of the annual meeting was mailed to stockholders or the date on which it is first disclosed to the public. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such proposal, (c) the class and number of shares of the Corporation that are beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business. In addition, if the stockholder's ownership of shares of the Corporation, as set forth in the notice, is solely beneficial, documentary evidence of such ownership must accompany the notice. Notwithstanding anything else in these bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 2. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare to the meeting that any business that was not properly brought before the meeting is out of order and shall not be transacted at the meeting.

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Section 3. NOTICE OF ANNUAL MEETING. Written or printed notice of the annual meeting, stating the place, day and hour thereof, will be served upon or mailed to each stockholder entitled to vote thereat at such address as appears on the books of the Corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 4. SPECIAL MEETING. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or the Certificate of Incorporation, may be called by the President, the Chairman of the Board, the Chief Executive Officer or by not less than a quorum of the board of directors, and shall be called by the President or Secretary at the request in writing of stockholders owning not less than two-thirds of the shares of capital stock of the Corporation issued and outstanding and entitled to vote at such meeting. Such request will state the purpose or purposes of the proposed meeting.

Section 5. NOTICE OF SPECIAL MEETING. Written notice of a special meeting of stockholders, stating the place, day and hour and purpose or purposes thereof, will be served upon or mailed to each stockholder entitled to vote thereat at such address as appears on the books of the Corporation, not less than ten days nor more than sixty days before the date of the meeting.

Section 6. BUSINESS AT SPECIAL MEETING. Business transacted at all special meetings will be confined to the purpose or purposes stated in the notice.

Section 7. STOCKHOLDER LIST. At least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, will be prepared by the Secretary. Such list, for a period of ten days prior to such meeting, will be kept on file at the registered office of the Corporation and will be subject to inspection by any stockholder at any time during usual business hours. Such list will also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the whole time of the meeting.

Section 8. QUORUM. The holders of at least one-half of the shares of capital stock issued and outstanding and entitled to vote thereat, represented in person or by proxy, will constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or these bylaws. If, however, such quorum is not present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, represented in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum is represented any business may be transacted which might have been transacted at the meeting as originally notified.

Section 9. MAJORITY VOTE. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy will decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, the Certificate of Incorporation or these bylaws, a different vote is required, in which case such express provision will govern and control the decision of such question.

Section 10. PROXIES. At any meeting of the stockholders every stockholder having the right to vote will be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder or his duly authorized attorney in fact and bearing a date not more than eleven months prior to said meeting.

Section 11. VOTING. Unless otherwise provided by statute, the Certificate of Incorporation or these bylaws, each stockholder will have one vote for each share of stock having voting power, registered in his name on the books of the Corporation.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. POWERS. The business and affairs of the Corporation will be managed by a board of directors. The board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, by the Certificate of Incorporation or these bylaws directed or required to be exercised or done by the stockholders.

Section 2. NUMBER OF DIRECTORS. The number of directors which constitute the whole board will be no less than two and no more than twelve, as such number shall be determined by resolution of the board of directors from time to time; provided that no decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

Section 3. NOMINATION. Only persons who are nominated in accordance with the procedures set forth in these bylaws shall be eligible to serve as Directors. Nominations of persons for election to the board of directors of the Corporation may be made at a meeting of stockholders (a) by or at the direction of the board of directors or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 3, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 3.

Nominations by stockholders shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than 60 days nor more than 90 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is changed by more than 30 days from such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made, and (b) in the case of a special meeting at which directors are to be elected, not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to the stockholder giving the notice (i) the name and address, as they appear on the Corporation's books, of such stockholder and (ii) the class and number of shares of the Corporation which are beneficially owned by such stockholder and also which are owned of record by such stockholder; and (c) as to the beneficial owner, if any, on whose behalf the nomination is made, (i) the name and address of such person and (ii) the class and number of shares of the Corporation which are beneficially owned by such person. At the request of the board of directors, any person nominated by the board of directors for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

The presiding officer of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by this Section 3, and he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 4. **ELECTION AND TERM.** The directors shall be elected at the annual meeting of stockholders, except as provided in Section 5, and each director elected shall hold office until his successor shall be elected and shall qualify. Directors need not be residents of Delaware or stockholders of the Corporation.

Section 5. **VACANCIES.** If any vacancy occurs in the Board of Directors caused by death, resignation, retirement, disqualification, or removal from office of any director, or otherwise, or if any new directorship is created by an increase in the authorized number of directors, a majority of the directors then in office, though less than a quorum, or a sole remaining director, may choose a successor or fill the newly created directorship; and a director so chosen shall hold office until the next election and until his successor shall be duly elected and shall qualify, unless sooner displaced. Any director may be removed either for or without cause at any special meeting of stockholders duly called and held for such purpose.

Section 6. **RESIGNATION; REMOVAL.** Any director may resign at any time. The board of directors may, by majority vote of the directors then in office, remove a director for cause.

ARTICLE IV

MEETINGS OF THE BOARD

Section 1. **FIRST MEETING.** Each newly elected board of directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the stockholders, and no notice of such meeting shall be necessary; or the board may meet at such place and time as is fixed by the consent in writing of all the directors.

Section 2. **REGULAR MEETINGS.** Regular meetings of the board may be held at such time and place either within or without the State of Delaware and with such notice or without notice as is determined from time to time by the board.

Section 3. **SPECIAL MEETINGS.** Special meetings of the board may be called by the President or the Chairman of the Board of directors on one day's notice to each director, either personally or by mail or telegram. Special meetings will be called by the President or the Secretary in like manner and on like notice upon the written request of any director.

Section 4. **QUORUM AND VOTING.** At all meetings of the board, a majority of the directors will be necessary and sufficient to constitute a quorum for the transaction of business; and the act of a majority of the directors present at any meeting at which there is a quorum will be the act of the board of directors, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 5. **TELEPHONE MEETINGS.** The directors may hold their meetings in any manner permitted by law. Without limitation, at any meeting of the board, a member may attend by telephone, radio, television, interactive media or similar means of communication by means of which all participants can hear each other which permits him to participate in the meeting, and a director so attending will be deemed present at the meeting for all purposes including the determination of whether a quorum is present.

Section 6. **ACTION BY WRITTEN CONSENT.** Any action required or permitted to be taken by the board of directors or executive committee under applicable statutory provisions, the Certificate of Incorporation, or these bylaws, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or executive committee, as the case may be, and filed with the minutes of the proceedings of the directors or executive committee, as the case may be.

## ARTICLE V

### COMMITTEES

Section 1. **COMMITTEES OF DIRECTORS.** The board of directors shall establish an Audit Committee and a Compensation Committee, and may establish an Executive Committee and such other committees as may be established by resolution of a majority of the whole Board. Each of such committees shall consist of one or more members of the Board. Members of committees of the board of directors shall be elected annually by vote of a majority of the board. The Chief Executive Officer shall be an ex-officio nonvoting member of each committee (except the Audit and Compensation Committees) of which he is not an official voting member. With respect to any committee (including the Audit and Compensation Committees) of which the Chief Executive Officer is not an official voting member, the Chief Executive Officer shall be given notice of all committee meetings at the same time notice is given to committee members, and the Chief Executive Officer shall be afforded the opportunity to speak at the committee meeting. Presence of a majority of the committee members (not counting any ex-officio nonvoting members) shall constitute a quorum. Committees may act by majority vote of the voting members present at a meeting. Each of such committees shall have and may exercise such of the powers of the board of directors in the management of the business and affairs of the Corporation as may be provided in these bylaws or by resolution of the board of directors. Each of such committees may authorize the seal of the Corporation to be affixed to any document or instrument. The board of directors may designate one or more directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of such committee. Meetings of committees may be called by any member of a committee by written, telegraphic or telephonic notice to all members of the committee and the Chief Executive Officer and shall be at such time and place as shall be stated in the notice of such meeting. Any member of a committee may participate in any meeting by means of conference telephone or similar communications equipment. In the absence or disqualification of a member of any committee the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum may, if deemed advisable, unanimously appoint another member of the board to act at the meeting in the place of the disqualified or absent member. Each committee may fix such other rules and procedures governing conduct of meetings as it shall deem appropriate.

Section 2. **EXECUTIVE COMMITTEE.** The board of directors, by resolution adopted by a majority of the whole board, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, will have and may exercise all of the authority of the board of directors in the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it, except where action by the board of directors is specified by statute. The executive committee will keep regular minutes of its proceedings and report the same to the board when required.

Section 3. **AUDIT COMMITTEE.** The Audit Committee shall consist of not less than two members of the board of directors. The Audit Committee shall be responsible for recommending to the entire board engagement and discharge of independent auditors of the financial statements of the Corporation, shall review the professional service provided by the independent auditors, shall review the independence of independent auditors, shall review with the auditors the plan and results of the auditing engagement, shall consider the range of audit and non-audit fees, shall review the adequacy of the Corporation's system of internal audit controls, shall review the results of procedures for internal auditing and shall consult with the internal auditor of the Corporation with respect to all aspects of the Corporation's internal auditing program. In addition, the Audit Committee shall direct and supervise special investigations as deemed necessary by the Audit Committee.

Section 4. COMPENSATION COMMITTEE. The Compensation Committee shall consist of not less than two members of the board of directors. The Compensation Committee shall recommend to the board the compensation to be paid to officers and key employees of the Corporation and the compensation of the board of directors. Except as otherwise provided in any specific plan adopted by the board of directors, the Compensation Committee shall be responsible for administration of executive compensation plans, stock option plans and other forms of direct or indirect compensation of officers and key employees, and each member of the Compensation Committee shall have the power and authority to execute and bind the Corporation to such documents, agreements and instruments related to such plans and compensation as are approved by the Compensation Committee. In the alternative, the Compensation Committee may authorize any officer of the Corporation to execute such documents, agreements and instruments on behalf of the Corporation. In addition, the Compensation Committee shall review levels of pension benefits and insurance programs for officers and key employees.

Section 5. OTHER COMMITTEES. The board of directors may similarly create other committees for such terms and with such powers and duties as the board deems appropriate.

Section 6. ADVISORY DIRECTORS. The board of directors may, by majority vote, appoint one or more advisory directors. Advisory directors shall serve at the board's convenience solely to advise the board of directors, and shall have no formal responsibilities. No advisory director shall be entitled to vote at meetings of the board, nor shall any advisory director be counted when determining whether there is a quorum at directors' meetings. Advisory directors shall not be, by virtue of their position as advisory directors, agents of the Corporation, and they shall not have the power to bind the Corporation.

## ARTICLE VI

### COMPENSATION OF DIRECTORS

Section 1. ATTENDANCE FEES. Directors, as such, will not receive any stated salary for their services, but by resolution of the board a fixed sum and expenses of attendance may be allowed for attendance at each regular or special meeting of the board; however, this provision will not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees may be allowed like compensation for attending committee meetings.

## ARTICLE VII

### NOTICES

Section 1. METHODS OF NOTICE. Whenever any notice is required to be given to any stockholder or director under the provisions of any statute, the Certificate of Incorporation or these bylaws, it will not be construed to require personal notice, but such notice may be given in writing by mail addressed to such stockholder or director at such address as appears on the books of the Corporation, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail with postage thereon prepaid. Notice to directors may also be given by telegram, and notice given by such means shall be deemed given at the time it is delivered to the telegraph office.

Section 2. WAIVER OF NOTICE. Whenever any notice is required to be given to any stockholder or director under the provisions of any statute, the Certificate of Incorporation or these bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice. Attendance at any meeting will constitute a waiver of notice thereof except as otherwise provided by statute.

## ARTICLE VIII

### OFFICERS

Section 1. EXECUTIVE OFFICERS. The officers of the Corporation will consist of President, Vice President, Treasurer, and Secretary, each of whom shall be elected by the board of directors. The board of directors may also elect a chairman of the board, a chief executive officer, additional vice presidents, and one or more assistant secretaries and assistant treasurers. Any two or more offices may be held by the same person.

Section 2. ELECTION AND QUALIFICATION. The board of directors at its first meeting after each annual meeting of stockholders will elect the President, one or more Vice Presidents, a Secretary and a Treasurer, none of whom need be a member of the board.

Section 3. OTHER OFFICERS AND AGENTS. The board may elect or appoint such other officers, assistant officers and agents as it deems necessary, who will hold their offices for such terms and shall exercise such powers and perform such duties as determined from time to time by the board.

Section 4. SALARIES. The salaries of all officers of the Corporation will be fixed by the board of directors except as otherwise directed by the board.

Section 5. TERM, REMOVAL AND VACANCIES. The officers of the Corporation will hold office until their resignation or their successors are chosen and qualify. Any officer, agent or member of the executive committee elected or appointed by the board of directors may be removed at any time by the board of directors; provided, that such removal shall be without prejudice to the contract rights, if any, of such removed party. If any such office becomes vacant for any reason, the vacancy will be filled by the board of directors.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if one is elected, shall preside at meetings of the board of directors and stockholders and shall have such other powers and duties as may from time to time be prescribed by duly adopted resolutions of the board of directors.

Section 7. EXECUTIVE CHAIRMAN. The Executive Chairman shall be an officer of the Corporation, appointed by the Board from among the members of the Board, and shall be compensated as an officer of the Corporation. The Executive Chairman, if one is appointed, shall preside at meetings of the board of directors and stockholders if there is no Chairman of the Board or in the absence of the Chairman of the Board. The Executive Chairman shall supervise, guide, direct and assist the Corporation's Chief Executive Officer and have such other duties as may be assigned to him by the board of directors.

Section 8. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if one is appointed by the board of directors, shall, in the absence both the Chairman of the Board and the Executive Chairman, preside at meetings of the board of directors and stockholders and shall supervise and have overall responsibility for the business, administration and operations of the Corporation, reporting on a day-to-day basis to the Executive Chairman. In general, he shall perform all duties as from time to time may be assigned to him by the Executive Chairman and the board of directors.

Section 9. PRESIDENT. The President shall, subject to the board of directors, have general executive charge, management and control of the properties and operations of the corporation in the ordinary course of its business with all such powers with respect to such responsibilities including the powers of general manager; and the president shall see that all orders and resolutions of the board of directors are carried into effect. The president shall have such other powers and duties as may from time to time be prescribed by duly adopted resolution of the board of directors.

Section 10. VICE PRESIDENT. The Vice Presidents in the order determined by the board of directors will, in the absence or disability of the President, perform the duties and exercise the powers of the President, and will perform such other duties as the board of directors and President may prescribe.

Section 11. SECRETARY. The Secretary will attend all meetings of the board of directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and will perform like duties for the standing committees when required. He will give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and will perform such other duties as may be prescribed by the board of directors and President. He will keep in safe custody the seal of the Corporation and, when authorized by the board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his signature or by the signature of an assistant secretary.

Section 12. ASSISTANT SECRETARIES. The assistant secretaries in the order determined by the board of directors will perform, in the absence or disability of the Secretary, the duties and exercise the powers of the Secretary and will perform such other duties as the board of directors and President may prescribe.

Section 13. TREASURER. The Treasurer will have the custody of the corporate funds and securities and will keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and will deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the board of directors. He will disburse the funds of the Corporation as may be ordered by the board, taking proper vouchers for such disbursements, and will render to the board of directors and President, whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation.

Section 14. ASSISTANT TREASURERS. The Assistant Treasurers in the order determined by the board of directors, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and will perform such other duties as the board of directors and President may prescribe.

Section 15. OFFICER'S BOND. If required by the board of directors, any officer will give the Corporation a bond (to be renewed as the board may require) in such sum and with such surety or sureties as is satisfactory to the board for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

## ARTICLE IX

### SHARES AND STOCKHOLDERS

Section 1. CERTIFICATES REPRESENTING SHARES. The certificates representing shares of the Corporation will be numbered and entered in the books of the Corporation as they are issued. They will exhibit the holder's name and number of shares and will be signed by the President or Vice-President and the Secretary or an Assistant Secretary, and will be sealed with the seal of the Corporation or a facsimile thereof. The signature of any such officer may be facsimile if the certificate is countersigned by a transfer agent or registered by a registrar, other than the Corporation itself or an employee of the Corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate has ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of its issuance.

Section 2. TRANSFER OF SHARES. Upon surrender to the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it will be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Notwithstanding the foregoing, no transfer will be recognized by the Corporation if such transfer would violate federal or state securities laws, the Certificate of Incorporation, or any stockholders agreements which may be in effect at the time of the purported transfer. The Corporation may, prior to any such transfer, require an opinion of counsel to the effect that any such transfer does not violate applicable securities laws requiring registration or an exemption from registration prior to any such transfer.

Section 3. **FIXING RECORD DATE.** For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the board of directors may provide that the stock transfer books be closed for a stated period but not to exceed, in any case, sixty days. If the stock transfer books are closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books must be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the board of directors may fix in advance a date as the record date for any such determination of stockholders, such date, in any case, to be not more than sixty days and, in case of a meeting of stockholders, not less than ten days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, will be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as herein provided, such determination will apply to any adjournment thereof except where the determination has been made through the closing of stock transfer books and the stated period of closing has expired.

Section 4. **REGISTERED STOCKHOLDERS.** The Corporation is entitled to recognize the exclusive right of a person registered on its books as the owner of the share to receive dividends, and to vote as such owner, and for all other purposes as such owner; and the Corporation is not bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 5. **LOST CERTIFICATE.** The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representatives, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

## ARTICLE X

### GENERAL

Section 1. **DIVIDENDS.** The board of directors may from time to time declare, and the Corporation pay, dividends on its outstanding shares of capital stock in cash, in property, or in its own shares, except when the declaration or payment thereof would be contrary to statute or the Certificate of Incorporation. Such dividends may be declared at any regular or special meeting of the board, and the declaration and payment will be subject to all applicable provisions of laws, the Certificate of Incorporation and these bylaws.

Section 2. **RESERVES.** Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, deem proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors may think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 3. DIRECTORS' ANNUAL STATEMENT. The board of directors will present at each annual meeting and when called for by vote of the stockholders at any special meeting of the stockholders, a full and clear statement of the business and condition of the Corporation.

Section 4. CHECKS. All checks or demands for money and notes of the Corporation will be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 5. CORPORATE RECORDS. The Corporation will keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders giving the names and addresses of all stockholders and the number and class of shares held by each. All other books and records of the Corporation may be kept at such place or places within or without the State of Delaware as the board of directors may from time to time determine.

Section 6. SEAL. The corporate seal will have inscribed thereon the name of the Corporation. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced.

Section 7. AMENDMENT. These bylaws may be altered, amended or repealed or new bylaws may be adopted at any annual meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, provided notice of the proposed alteration, amendment, repeal or adoption be contained in the notice of such meeting, by the affirmative vote of the holders of a majority of the shares entitled to vote at such meeting and present or represented thereat, or by the affirmative vote of a majority of the board of directors at any regular meeting of the board or at any special meeting of the board; provided however, that to amend any provision of these bylaws relating to the prohibition of stockholder action without a meeting, the prohibition of stockholders calling a special meeting, the number, election and term of the Corporation's directors, or the removal of directors, the affirmative vote of at least two-thirds of the voting power of the then outstanding shares eligible to vote generally in the election of directors shall be required. No change of the time or place of the annual meeting of stockholders may be made after the issuance of notice thereof.

Section 8. INDEMNIFICATION. Each director, officer and former director or officer of the Corporation, and any person who may have served or who may hereafter serve at the request of the Corporation as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, is hereby indemnified by the Corporation against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification will not be deemed exclusive of any other rights to which such director, officer or other person may be entitled under any agreement, vote of stockholders, or otherwise. Without limitation, nothing in this section shall limit any indemnification provisions in the Certificate of Incorporation.

## ADDENDUM TO SYSTEMS INTEGRATOR AGREEMENT

This Addendum ("Addendum") to the Systems Integrator Agreement dated June 28, 2010, as amended to date ("Agreement") is entered into and is effective as of the date of last signature below (the "Addendum Effective Date"), by and between the Cisco entity defined in the Agreement ("Cisco"), and INX, Inc. ("Reseller" or "Reseller"). All capitalized terms used but not otherwise defined in this Addendum have the meanings set forth in the Agreement.

WHEREAS Cisco and Reseller have previously entered into the Agreement in order to set forth the terms and conditions pursuant to which Reseller may purchase and/or license Cisco Services and Products; and

WHEREAS, Tidal Software LLC ("Tidal") is a wholly owned subsidiary of Cisco; and the parties desire to permit Reseller to resell certain Tidal products and services under the Agreement, on the terms of the Agreement and the additional terms in this Addendum. For purposes of this Addendum, all references to "Cisco" also include Tidal.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used in this Addendum:

(a) "Tidal Purchase Order" means a written or electronic order issued by Reseller to Cisco for Tidal Products or Tidal Services to be purchased, licensed or provided under this Addendum.

(b) "Tidal Products" means all Tidal software and documentation, listed from time to time on Tidal's then-current price list, and may include without limitation Tidal Enterprise Scheduler (TES), Tidal Intelligent Automation (TIA), and Tidal's Horizon, Transaction Analyser and Intersperse software.

(c) "Tidal Services" means any Tidal maintenance or technical support (as described in Tidal's standard Technical Support Policy), and any other services purchased under this Agreement and performed or to be performed by Cisco, related to Tidal Products.

(d) "Tidal Transactional Advanced Services" means any project-related or consultancy services performed by Cisco under a Statement of Work, related to Tidal Products.

2. Cisco Authorization Regarding Purchase and Resale of Tidal Products and Tidal Services. Subject to the terms and conditions set forth in this Addendum, and during the term of the Agreement, Cisco authorizes Reseller to purchase and/or license Tidal Services and Tidal Products directly from Cisco (not from an Authorized Source), and to resell and/or redistribute such Tidal Services and Tidal Products directly to End Users within the Territory, solely for such End Users internal use (not for resale or redistribution). The phrase "within the Territory" means that End Users must deploy the Tidal Products and/or receive the Tidal Services within the Territory. As applicable, references in the Agreement to "Products" will also include Tidal Products; and references in the Agreement to "Services" will also include "Tidal Services." At all times, Cisco shall perform Tidal Services on Reseller's behalf. In no event will Reseller be deemed an agent of Cisco.

3. Pricing.

(a) Prices for Tidal Products and Tidal Services will be those specified in Tidal's then current price list (less any applicable discount agreed upon by the parties) at the time of acceptance of the Tidal Purchase Order by Cisco, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Reseller for such Tidal Products or Tidal Services.

(b) All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Reseller shall pay any taxes related to Tidal Products and Tidal Services provided pursuant to this Agreement (except for taxes based on Cisco's revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

(c) Reseller is free to determine its resale prices unilaterally. Reseller understands that neither Cisco, nor any employee or representative of Cisco, may give any special treatment (favorable or unfavorable) to Reseller as a result of Reseller's selection of resale prices. No employee or representative of Cisco or anyone else has any authority to specify what Reseller's resale prices for the Tidal Products or Tidal Services must be, or to inhibit in any way, Reseller's pricing discretion with respect to such Tidal Products or Tidal Services.

(d) Subject to Reseller's pricing discretion outlined immediately above, Cisco and Reseller may agree that Cisco will provide additional discount to Reseller for Reseller's Resale to one or more specific End Users. Any such agreement shall be in writing and shall specify a fixed time period during which such additional discount shall be provided. If no time limit is specified in the written agreement, the time period shall be ninety (90) days from the effective date of the written agreement or electronic confirmation regarding additional discount. If Cisco provides Reseller with such additional discount and subsequently determines that Reseller has Resold Tidal Products or Tidal Services purchased with such additional discount to End Users other than the End User identified in the written agreement, then Cisco may, in addition to all of its other rights and remedies, all of which are reserved, (i) invoice Reseller for the difference between such additional discount and Cisco's applicable list price; (ii) audit Reseller's purchases and invoice Reseller for all reasonable costs incurred by Cisco in its performance of the audit; (iii) suspend Reseller's access to price deviations and other Cisco sales and marketing programs; (iv) suspend shipments to Reseller; and (v) terminate this Agreement.

#### 4. Ordering.

(a) Reseller shall purchase or license Tidal Products or Tidal Services by issuing a Tidal Purchase Order, signed, if requested by Cisco, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Tidal Products and Tidal Services ordered and such other information that Cisco may reasonably request (e.g., Tidal Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the End User for each Tidal Product and Tidal Service). Tidal Purchase Orders will be submitted to the address or location specified by Cisco. No contingency contained on any Tidal Purchase Order shall be binding upon Cisco. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Tidal Purchase Order or other correspondence or documentation submitted by Reseller to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.

(b) Cisco will use commercially reasonable efforts to provide order acknowledgement information within ten (10) business days of receipt for Tidal Purchase Orders placed on Cisco. Upon and subject to credit approval by Cisco following Cisco's receipt of any Tidal Purchase Order, Cisco will review and accept or decline all Tidal Purchase Orders within ten (10) business of receipt, and no other person is authorized to accept Tidal Purchase Orders on behalf of Cisco. Cisco may accept a Tidal Purchase Order even if some of the information required in the paragraph immediately above is missing or incomplete.

(c) Use of Cisco's online services are not available for submission of Tidal Purchase Orders for Tidal Products and Tidal Services. A Tidal Purchase Order for Tidal Products or Tidal Services may not include any Cisco Products or Cisco Services. However, a single Tidal Purchase Order may include both Tidal Products and Tidal Services.

(d) All sales are final. Except as provided in Tidal's warranty statements, Cisco does not accept returns unless (i) Cisco shipped software other than as specified in the Tidal Purchase Order, (ii) such software is unopened and has not been uploaded or otherwise used, and (iii) the software is returned in accordance with Cisco's and Tidal's then-current return policy and procedures.

(e) Cisco may in its discretion provide "temporary" software keys (e.g., for temporary, short-term access or entitlement to Tidal software) prior to payment in full for any ordered Tidal software; provided, however, in no event will Cisco be required to provide any "permanent" software keys (e.g., for longer term access or entitlement to Tidal software), until after Cisco has received payment in full for such software license.

5. Payment. Upon and subject to credit approval by Cisco, payment terms shall be thirty (30) days from shipping or delivery date. All payments shall be made in United States dollars. If at any time Reseller is delinquent in the payment of any invoice, or is otherwise in breach of this Agreement, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment or delivery (including partial shipments or deliveries) of any order, require Reseller to prepay for further shipments or deliveries, and/or withhold the provision of Tidal Services, until complete payment has been received. Any sum not paid by Reseller when due shall bear interest from the due date until paid at a rate of (i) ten percent (10%) per annum or (ii) the maximum rate permitted by law, whichever is less. Payment will be sent to the address or location designated by Cisco, as may be changed by Cisco from time to time.

6. Software License and Support Terms.

(a) Notwithstanding any software license or support services terms contained in the Agreement, Cisco does not grant to Reseller under the Agreement or this Addendum any license to use any Tidal Products or Tidal Services, except for the limited, non-exclusive, non-transferable, revocable, non-sublicensable license to market and Resell the Tidal Products and Tidal Services and related documentation directly to End Users in the Territory during the term of the Agreement, as contemplated in Section 2 above.

(b) Prior to accepting a Tidal Purchase Order from an End User for any Tidal Product, Reseller will provide to the End User an applicable Tidal Master License Agreement (in the form provided by Cisco), which sets forth, among other things, (a) the scope of the license to Tidal Products to be provided by Cisco to the End User, (b) applicable warranties for any Tidal Products, and (c) terms on which Tidal Services will be performed by Cisco for the End User. Such Master License Agreement will be entered into between Cisco and the End User, without involvement of Reseller – and will not be effective until fully executed by both Cisco and the End User.

(c) Prior to accepting a Tidal Purchase Order from an End User for any subscription (maintenance) Tidal Services, Reseller shall ensure End User is aware of and accepts the terms and obligations set forth on Tidal's standard Technical Support Policy, as Tidal may revise in its discretion from time to time.

(d) Reseller shall notify Cisco promptly of any breach or suspected breach of the Tidal Master License Agreement and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's or its suppliers' intellectual property rights including pursuing an action against any breaching third parties.

7. Independent Transactions, Negotiations and Pricing for Cisco Versus Tidal Products and Services. For purposes of this Section 7 only, "Cisco Products" means all Products *other than* Tidal Products; and "Cisco Services" means all Services *other than* Tidal Services. The parties understand and agree that:

(a) The terms of this Addendum and any Tidal Purchase Order issued hereunder, have been and will be negotiated and agreed to by Reseller and Cisco personnel independently of any negotiations, agreements or understandings with respect to any Cisco Products or Cisco Services;

(b) Reseller's obligation to pay for any Tidal Products or Tidal Services purchased under the Agreement shall not be contingent upon or otherwise subject to the delivery of any Cisco Products or Cisco Services or the performance of any obligation not directly related to the Tidal Products;

(c) No refunds of amounts paid for Tidal Products or Tidal Services shall be payable by reason of a breach or other failure by Cisco to meet its obligations with respect to any Cisco Products or Cisco Services; and no refunds of amounts paid for Cisco Products or Cisco Services shall be payable by reason of a breach or other failure by Cisco to meet its obligations with respect to any Tidal Products or Tidal Services; and

(d) Reseller may not set off amounts owed by Cisco with respect to Tidal Products or Tidal Services against any amounts payable by Reseller for any Cisco Products or Cisco Services and vice versa.

8. Limited Warranty. In addition to the warranty provisions and disclaimers set forth in the Agreement, Reseller understands and agrees as follows: EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE TO THE END USER AS SET FORTH IN A CISCO-PROVIDED MASTER LICENSE AGREEMENT INCLUDED WITH THE APPLICABLE TIDAL PRODUCT, CISCO MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TIDAL PRODUCTS AND TIDAL SERVICES. CISCO DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE TIDAL PRODUCTS OR TIDAL SERVICES OR THE MEDIA ON WHICH THEY ARE SUPPLIED OTHER THAN AS PROVIDED IN THE CISCO-PROVIDED MASTER LICENSE AGREEMENT. RESELLER SHALL MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF CISCO. CISCO DOES NOT WARRANT THE QUALITY OR PERFORMANCE OF TIDAL PRODUCTS OR TIDAL SERVICES WILL MEET RESELLER'S OR END CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF TIDAL PRODUCTS WILL BE OR CAN BE MADE UNINTERRUPTED OR ERROR FREE.

9. Renewals. In addition to the terms set forth in the Agreement, prior to expiration of a Tidal Services contract: (a) Cisco may in its discretion send reminders to both Reseller and its End User(s); and (b) upon request by Cisco, Reseller will reconfirm the End User's identity (and any other information that Cisco may request regarding the expiring service contract(s)); and (c) Reseller will (i) initiate the renewal process with its End User and forward to Cisco the completed renewal with Tidal Purchase Order, or (ii) notify Cisco of Reseller's intent to cancel Tidal Services. If, fifteen (15) days before expiration date of applicable Tidal Services, Cisco has not received a Tidal Purchase Order for the renewal, Cisco, or its authorized agents, may contact the End User to arrange for the renewal of Tidal Services either directly with Cisco or via another Cisco-authorized reseller.

10. Tidal Transactional Advanced Services. For purposes of clarification, Reseller is authorized under this Addendum to purchase Tidal Transactional Advanced Services on the same terms and conditions as set forth on the "Exhibit for the Purchase and Resale of Cisco Transactional Advanced Services," attached to the Agreement; and all references in such Exhibit to "Transactional Advanced Services" will also refer include "Tidal Transactional Advanced Services".

11. General

(a) **Entitlement.** Reseller acknowledges that Cisco has the right to verify an End User's entitlement to receive Tidal Services, and that an End User is entitled to receive Tidal Services only for Tidal Products for which Reseller has paid the applicable license and support fees to Cisco. Reseller agrees to assist Cisco with enforcement of End User entitlement as necessary, including, without limitation, providing serial numbers, software keys, and/or any other relevant information to Cisco and enabling Cisco to undertake appropriate inventory review(s).

(b) **Disclosure of Contract Information.** In addition to all other obligations of confidentiality, Reseller shall not disclose to any third party any of the information contained in this Addendum.

(c) **Third Party Services.** Cisco reserves the right to subcontract the provision of all or part of the Tidal Services to a third party.

(d) **Indemnification.** Reseller hereby agrees to indemnify and hold Cisco harmless from any claim, loss, damage or expense, including reasonable court costs and attorneys' fees, resulting from any claim made by an End User against Cisco hereunder as a third party beneficiary or otherwise. This Section shall not limit Cisco's obligations, subject to the terms and conditions of this Agreement, to provide the Tidal Services described herein.

(e) Except as expressly provided herein, all terms of the Agreement remain unmodified and in full force and effect.

(f) Unless otherwise agreed upon by the parties in writing, this Addendum will terminate upon the earlier of (i) the termination or expiration of the Agreement (ii) one (1) year from the Addendum Effective Date.

(g) To the extent there is a conflict between the specific terms of this Addendum relative only to the resale of Tidal Products and Services and the Agreement, such specific terms of this Addendum shall control.

(h) This Addendum is the complete agreement among the parties concerning the subject matter herein and replaces any prior oral or written communications by the parties. There are no conditions, understandings, agreements, representations or warranties, express or implied, which are not specified herein

(i) This Addendum may only be modified by a written document executed by the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed. Each party represents and warrants that its respective signatories, whose signatures appear below, are, on the date of signature, authorized to execute this Addendum.

Cisco Systems, Inc.

INX Inc.

By: /s/ George Li  
Name: George Li  
Title: Sr. Director, Finance  
Date: June 29, 2010

By: /s/ Paul Klotz  
Name: Paul Klotz  
Title: Vice-President, Operations  
Date: June 28, 2010

AMENDMENT 12

This Amendment 12 ("Amendment") by and between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, CA, 95134, and INX Inc. ("Integrator"), a Delaware corporation having its principal place of business at 1955 Lakeway Drive, Suite 220, Lewisville, TX 75057, is entered into as of the date last written below ("Effective Date").

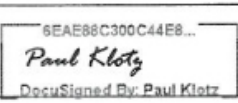
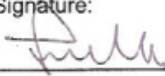
WHEREAS, Cisco and Integrator have previously entered into the Systems Integrator Agreement dated November 13, 2001, as amended ("Agreement"), and

NOW WHEREFORE, the parties agree to amend the Agreement as follows:

- Exhibit I, Partner Essential Operate Services Exhibit and Appendixes A-E thereto are hereby incorporated into the Agreement.

All other terms and conditions of the Agreement remain unchanged and in full force and effect. This Amendment and the Agreement as amended are the complete agreements between the parties hereto regarding this subject matter. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. In the event of a conflict between the Agreement and this Amendment, this Amendment will prevail with regard to the subject matter herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Amendment.

INX Inc.	Cisco Systems, Inc.
Authorized Signature:  6EAE88C300C44E8... DocuSigned By: Paul Klotz	Authorized Signature: 
Name: Paul Klotz	Name: Leon Ma
Title: Vice-President, Operations	Title: Controller
Date: 10/13/2010	Date: 10-19-10

**EXHIBIT I**  
**PARTNER ESSENTIAL OPERATE SERVICES EXHIBIT**

This Partner Essential Operate Services Exhibit (“Exhibit”) supplements the Agreement and all the terms and conditions of the Agreement apply to this Exhibit. To the extent there is a conflict between the Agreement and this Exhibit, the terms of this Exhibit shall take precedence over the terms and conditions of the Agreement with regard to the subject matter described herein. This Exhibit, together with the Agreement, supersedes any prior or contemporaneous agreement that covers the same subject matter.

**1.0 DEFINITIONS**

- 1.1 **“ATP”** means Cisco’s Advanced Technology Provider Program.
- 1.2 **“Bug Fix”** means an error correction, patch or workaround for the Software, which either comprises new Software or is a network-bootable Software image as determined by Cisco and that is provided to Integrator by Cisco and which may comprise a Maintenance Release but which shall not comprise a Minor or Major Release.
- 1.3 **“Equipment List”** means the Cisco approved Software list for each supported End User that identifies the Software supported under this Exhibit.
- 1.4 **“First Level Support”** means (a) the ability to provide general Software information (pre-sales and post-sales), Software configuration, installation, and Update and Feature Set Upgrade support, (b) base problem determination and collection of relevant technical information, (c) filtering non-technical problems from technical problems, (d) resolution of obvious Software problems and known problems (through documentation available on Cisco.com or other local resources), (e) provision of basic internetworking troubleshooting expertise, (f) providing basic support on the standard Software protocols and features, (g) collection of captured network traces and diagnostic data, (h) providing regular problem resolution status reports to the End User, and (i) maintenance of knowledge of the End User’s network.
- 1.5 **“Maintenance Release”** means an incremental release of Software that provides maintenance fixes and may provide additional Software functions. Maintenance releases are designated by Cisco as a change in the digit(s) to the right of the tenths digit of the Software version number [x.x.(x)] or to the right of the hundredths digit of the Software version number [x.x.x.(x)].
- 1.6 **“Major Release”** means a release of Software that provides additional Software features and/or functions. Major Releases are designated by Cisco as a change in the ones digit of the Software version number [(x).x.x].
- 1.7 **“Minor Release”** means an incremental release of Software that provides maintenance fixes and additional Software features. Minor Releases are designated by Cisco as a change in the tenths digit(s) of the Software version number [x.(x).x].
- 1.8 **“Other Software”** means Software that an End User acquired from sources other than Integrator.
- 1.9 **“Second Level Support”** means (a) resolution of the majority of complex configuration problems by troubleshooting and simulation (i.e. recreates), (b) resolution of most Software problems; determination of Software specification defects, (c) provision of lab simulation and problem replication, (d) performance of interoperability and compatibility testing for new Software releases prior to being deployed into production network, (e) definition of an action plan for troubleshooting/resolution, (f) provision of advanced support on all Software protocols and features, (g) use of external analyzing tools when appropriate, (h) analysis of traces and diagnostic data when appropriate, (i) provision of workarounds for Software bugs (where present or alternate functionalities allow it) and troubleshooting bugs that were not diagnosed or resolved during First Level Support, and (j) provision of contact with complete steps to reproduce a problem in event of escalation to Third Level Support.

- 1.10 **“Software”** means the Software either made available by Cisco’s Customer Contact Business Unit (“CCBU”), except Cisco’s Call Manager Software, and includes but is not limited to Cisco’s (a) Intelligent Contact Management (“ICM”) software and Cisco Customer Interaction Suite software, (b) Internet Protocol Customer Contact Group, (c) ICD software and Cisco IVR software, and (d) other software which Cisco designates as CCBU Software, or Cisco Unified MeetingPlace and Cisco Unified MeetingPlace Express Software made available by Cisco’s Unified Communications Business Unit.
- 1.11 **“Specialization”** or **“Specialized”** means a classification, further described on [Cisco.com](http://Cisco.com), assigned by Cisco to an Integrator that has demonstrated expertise in a specific technology focused area.
- 1.12 **“Third Level Support”** means (a) the ability to resolve unknown problems such as problems reported to TAC for the first time in which no documentation exists for the problem on [Cisco.com](http://Cisco.com) or any other format, (b) resolution of problems associated with an identified bug that is not yet published on [Cisco.com](http://Cisco.com), (c) provision of workarounds for Software bugs and troubleshooting bugs that require a specialized expertise level beyond First or Second Level Support, (d) issue reproduction with complex lab simulations, (e) provision of interface with Software development engineering support for resolution of Software defects, and (f) identification of interoperability issues that may be caused by third party software/hardware.
- 1.13 **“Third Party Products”** means third party hardware and software, and all upgrades thereto, that are designated by Cisco as required for (a) the operation of Software in conformance with Cisco’s applicable Software documentation, and (b) Cisco’s support of the Software in accordance with this Exhibit.

## 2.0 SCOPE

- 2.1 **Support Services.** The support hereunder is intended for an Integrator who supports End Users under Integrator’s own brand of service. Cisco will provide services described hereunder to Integrator as backup to its technical capabilities; provided however, that Integrator will retain primary responsibility for providing support to its End Users and Cisco shall have no obligation to provide support directly to End Users.
- 2.2 **Certification.** Unless otherwise specified, Integrator must be designated by Cisco as an Advanced Technology Provider (“ATP”) or a Specialized Integrator in order to participate in the support program described in this Exhibit, subject to the ATP or Specialization requirements to support the Software as shown on Appendix C (ATP/Specialization Guideline). During any period in which Integrator does not attain or maintain ATP status or its Specialization status shown in Appendix C, Cisco may provide support directly to End Users, or allow Integrator to subcontract such support from Cisco on behalf of End Users, and in both cases, Cisco will provide such support in accordance with Cisco’s prevailing rates and standard support terms and conditions then in effect for End Users.

### 3.0 CISCO RIGHTS AND OBLIGATIONS

In consideration of the service fee paid by Integrator, Cisco will provide the following services to Integrator:

#### 3.1 Technical Support.

- 3.1.1 Cisco shall provide 24-hour 7-days per week access to Cisco's TAC for Third Level Support. Cisco will respond to Integrator within one (1) hour to all calls received during Standard Business Hours and to Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next business day. Cisco TAC interfacing with Integrator's technical response center staff will be English speaking.
- 3.1.2 Cisco will supply the appropriate level of technical resources based on problem severity and elapsed time to assist Integrator with problem resolution and to ensure adherence to Cisco's Problem Prioritization and Escalation Guideline as described in Appendix A. If mutually agreed between Cisco and Integrator that Cisco on-site technical resources are required for resolution, Cisco will dispatch the necessary level of technical support to assist Integrator at Cisco's then current time and materials or noncontract rates.

#### 3.2 Software Support.

- 3.2.1 Software Releases. Cisco will make Maintenance and Minor Releases for Software available, when released by Cisco as follows: (a) via download from Cisco.com (as available), and (b) shipment of Software media as specified below. Cisco will provide supporting documentation with each release as follows: (a) on CD ROM; or (b) one paper copy, which shall be included in each shipment. Cisco will not provide Major Releases of Software under this Exhibit.
  - 3.2.2 Release Support. Cisco, in meeting any support obligations, may require Integrator's End User to install the latest release of Software.
  - 3.2.3 Cisco will arrange shipments of Maintenance and Minor Releases to Integrator via express transportation (freight and insurance charges included). Integrator requests for alternate carriers will be at Integrator's expense.
  - 3.2.4 Software releases and supporting documentation will be made available from the Cisco.com Software Center ([www.cisco.com/software](http://www.cisco.com/software)) or on physical media such as CDROM, through the Cisco Product Upgrade Tool ([www.cisco.com/upgrade](http://www.cisco.com/upgrade)). Applicable supporting documentation is limited to one copy per release. Additional copies may be purchased from Cisco.
- 3.3 **Cisco.com Access.** Cisco will provide an appropriate level of Integrator access to Cisco.com. Cisco.com is available to End Users upon approval by Integrator pursuant to the process in Appendix B ("Partner Initiated Customer Access" – "PICA"). This system provides the End User with technical and general information about Software and access to Cisco's on-line Software center library. Cisco.com may be subject to access restrictions as determined by Cisco from time to time.

- 3.4 **Special Requirements.** For some Software added to the Price List, including Software which become Cisco Software as a result of an acquisition by Cisco of another entity, Cisco may impose, installation, or training requirements on Integrator prior to allowing Integrator to buy and/or support such Software from Cisco.
- 3.5 **Right to Provide Support Directly.** Notwithstanding anything in the Agreement to the contrary, Cisco reserves the right to provide support directly to End Users, even if Integrator is providing support to such End Users.

#### 4.0 INTEGRATOR RIGHTS AND OBLIGATIONS

##### 4.1 General.

- 4.1.1 Integrator shall endeavor to verify the existence of a Software problem, as applicable, prior to requesting support from the TAC.
- 4.1.2 Integrator is responsible for managing its support agreements with each End User.
- 4.1.3 Integrator shall establish problem priorities with End User consistent with the definitions in Cisco's Problem Prioritization and Escalation Guideline (Appendix A). Integrator will use commercially reasonable efforts to ensure that End User understands and follows the Escalation Guidelines.
- 4.1.4 Advanced Technology Provider and/or Specialization Programs. Integrator shall ensure that its status as an Advanced Technology Provider and that any applicable Specialization status is maintained for the period during which Integrator provides services to its End Users as set forth in this Exhibit. In the event Integrator has not achieved its ATP status within six (6) months from the effective date of this Exhibit, this Exhibit shall not extend beyond twelve (12) months from the effective date of this Exhibit and Integrator shall not be able to support Software that require ATP status as shown in Appendix C.

##### 4.2 Technical Support.

- 4.2.1 **Staff.** Integrator shall maintain a competent technical support staff of full-time direct employees to provide, at minimum, First and Second Level Support and shall provide the services hereunder in accordance with the ATP of Specialization requirements associated with the Software identified in Appendix C. Technical support person(s) shall be familiar with Cisco TAC protocol and procedures and Cisco logistics/RMA processes and procedures.
  - (a) Integrator's technical response center staff interfacing with Cisco TAC must be English speaking.
  - (b) **Focal Points.** Integrator will identify:
    - (i) a designated relationship manager to serve as the servicebusiness focal point for Cisco's monitoring of support services provided herein and for participation in quarterly meetings regarding the program performance metrics, and

- (ii) a duty manager to serve as Cisco's contact under the Prioritization and Escalation Guideline per Appendix A.

Integrator will promptly notify Cisco of any changes of the designated relationship manager and duty manager and will ensure that Cisco is provided with up-to-date contact information for such persons.

- 4.2.2 Integrator shall provide End User with 24-hour 7-days per week access to Integrator's technical response center. Integrator shall respond to End User within one (1) hour for all calls received during Standard Business Hours and for Severity 1 and 2 calls received outside Standard Business Hours.
- 4.2.3 Integrator must report to Cisco TAC unresolved network problems identified by End User as Cisco Software-related after Integrator has performed its First and Second Level Support obligations. Integrator will report all unresolved Severity 1 and Severity 2 problems to Cisco by telephone. Unresolved Severity 3 and Severity 4 problems may be reported via [Cisco.com](http://Cisco.com) or telephone.
- 4.2.4 Integrator shall open and close all cases on behalf of End User. Integrator will be the focal point in all cases until closed upon mutual agreement. Integrator must communicate case information to End User, and provide Cisco with the entire history of case and any additional information required by Cisco to resolve End User's problem.
- 4.2.5 Cisco's ability and obligation to provide the support services contained herein is subject to Integrator's adherence to Cisco's Problem Prioritization and Escalation Guideline described in Appendix A.
- 4.2.6 Integrator shall facilitate access to the Software such that problems may be diagnosed and corrected remotely via the internet or via modem access.
- 4.2.7 To open cases with Cisco's TAC, Integrator shall provide Cisco with service entitlement information that includes, but is not limited to, the service contract number (under which Software is supported) and serial number of the defective part.
- 4.2.8 Integrator shall provide electronic case management to its End User.
- 4.3 **Cisco.com Access.** Integrator will administer and authorize registered End User access to [Cisco.com](http://Cisco.com) via the Partner Initiated Customer Access ("PICA") process described in Appendix B of this Exhibit. End User's access level shall include the ability to receive individual case status and access to Cisco's on-line software library. Integrator shall not disclose its partner-level [Cisco.com](http://Cisco.com) access information.
- 4.4 Integrator shall provide information to End User as needed to enable End User to receive the support services hereunder, including but not limited to an Integrator problem prioritization and escalation guideline substantially similar in format to Cisco's Problem and Prioritization and Escalation Guidelines (Appendix A) and End User's PICA number to access information related to the support services hereunder. Integrator acknowledges that Cisco information contained in Appendix A, which includes but is not limited to the escalation guideline and the TAC phone numbers, shall not be provided to End Users.

- 4.5 **Records.** Integrator will maintain records of all Software serial numbers and Cisco service contract numbers in use at all End User sites.
- 4.6 **On-site Problem Resolution.** Integrator shall have the ability to go to the End User's site to provide problem resolution.
- 4.7 **Taxes.** Integrator is responsible for all-applicable taxes, fees and duties associated with the delivery of Services under this Exhibit.
- 4.8 **Integrator Contact Distribution Lists.** Integrator will establish electronic mail distribution lists (for example, aliases) for all Integrator contacts.
- 4.9 **Software Support.**
- 4.9.1 **Duplication Rights.** No duplication rights of any kind are granted by Cisco for the Software.
- 4.9.2 **Distribution Rights.** Cisco grants Integrator the right to distribute Maintenance and Minor Releases only to End Users currently licensed to use the Software and only for which Integrator has paid Cisco the applicable annual support fees.
- 4.9.3 Integrator will (a) generate workaround solutions to reported Software problems, or (b) implement a Cisco-developed patch to Software.
- 4.10 **Integrator Support for Other Software.** Integrator may receive support services from Cisco hereunder for Other Software, regardless of when the Other Software were purchased, under the following conditions: (a) Integrator provides Cisco with a request to support Other Software and a list including the Software(s) and serial number(s) to be supported; and (b) pays the fees set out in this Exhibit for the Other Software. Integrator may only support Other Software for which Integrator is qualified under the Advanced Technology Provider Initiative or the Specialization Program.
- 4.11 **Entitlement.**
- 4.11.1 **End User Software Usage.** Integrator acknowledges that End User may have access to Cisco's on-line Software library that contains, amongst other things, Software releases, images, bug fixes and patches for all Cisco Software and End User is only entitled to download information for Software(s) supported hereunder for which applicable license fees have been paid. Integrator shall assist Cisco with enforcement of End User entitlement as necessary and to provide Cisco with such information as Cisco may require to enable Cisco to monitor and enforce End User entitlement levels.
- 4.11.2 **End User Support.** Integrator acknowledges that for certain End User Software configurations and/or for certain End User Software licenses that are based on a per seat or per user license or other specific license or use terms, End User will be required to have its entire configuration including but not limited to all seats and/or users supported. Services provided by Cisco are conditioned upon Integrator ensuring that such End User configurations and/or seats or users are under support.

- 4.12 **Customer Satisfaction Survey.** Cisco reserves the right to survey End Users under Integrator support for Software for the limited purpose of ensuring customer satisfaction with the Software and Integrator support. For such purposes, Integrator shall provide Cisco with End User contact information.
- 4.13 **Direct Services Option.** This option is only available for Software from CCBU's IPCC Express Series of Software. For IPCC Express Software for which Integrator opts to resell Cisco brand services to be delivered directly by Cisco to the End User in accordance with Appendix D, Integrator shall not be responsible for providing the services specified in Sections 4.2 for such End User's covered Software. For Software for which Cisco is providing Cisco brand services, Integrator will not be entitled to any of the services described in Section 3.1 to 3.3.

#### **5.0 SERVICES NOT COVERED UNDER THIS EXHIBIT.**

- 5.1 Any customization or installation of Software (including installation of Maintenance and Minor Releases), and/or labor to install Software or any assistance in the installation of the Software. Unless otherwise agreed to by the parties, any installation assistance shall be at Cisco's then-current time and materials rates.
- 5.2 Cisco shall not be required to perform any on-site support under this Exhibit. If Cisco is requested to perform on-site diagnostic and remedial maintenance, except when mutually agreed, Integrator shall reimburse Cisco for all labor and travel expenses at Cisco's then-current time and material rates.
- 5.3 Support or replacement of Software that is altered, modified, mishandled, destroyed or damaged by natural causes or damaged during unauthorized use.
- 5.4 Services to resolve Hardware or Software problems resulting from or related to Third Party Products or causes beyond Cisco's control or Integrator's failure to perform its responsibilities under this Exhibit.
- 5.5 Support or replacement of Third Party Products.
- 5.6 Any Hardware upgrades, or third party hardware or software upgrades, required to run new or updated Software.
- 5.7 Services for Software for which Integrator has not paid the appropriate support fee to Cisco.
- 5.8 Electrical or site work external to the Software.
- 5.9 Support or replacement of Hardware.

#### **6.0 CISCO SERVICE FEES, PAYMENT TERMS AND CHANGES.**

- 6.1 Integrator shall pay the following fees:
- 6.1.1 **Year 1 Support Fee (Full Entitlement):** Integrator shall pay support fees annually in advance. Support fees for the initial twelve (12) months from the date of Software purchase shall be charged against all server/client licenses purchased by Integrator and calculated at Cisco's then-current Services list price less a discount of forty-seven (47%) percent. Year 1 support fees are payable on: (a) Software purchased under this Agreement, (b) Software purchased by Integrator from an authorized reseller; and (c) Other Software.

- 6.1.2 **Subsequent Year(s) Support Fee (Selective Entitlement):** Integrator shall pay support fees annually in advance at time of Software support renewal. For each server/client license that Integrator elects to have supported, the annual support fees shall be calculated at Cisco's then current Services list price less a discount of forty-seven (47%) percent.
- 6.1.3 **Incidental Expenses.** Integrator agrees to pay all travel and out-of-pocket expenses if Cisco is requested by Integrator to perform on-site services or services outside the scope of this Exhibit. Engineering time will be billed at the then-current applicable time and materials rates. Cisco reserves the right to charge for travel time.
- 6.1.4 **Reinstatement Fees.** Certain Software for which support has lapsed may be subject to Cisco's prevailing reinstatement fees.
- 6.2 Support for Software in Integrator's installed base can be transferred to another Cisco authorized Integrator under the following conditions:
- 6.2.1 Integrator provides Cisco with a notification including (a) identification of the Software and any identification number for which support is being transferred, and (b) the date of the transfer and the Cisco authorized Integrator to whom support is being transferred. An authorized Integrator must be an Integrator who is an Advanced Technology Provider or maintains its Specialization status.
- 6.2.2. Cisco receives confirmation of such transfer and payment of the service fee for the Software from the Cisco authorized Integrator who will be assuming support.
- 6.3 With respect to Software licensed or supported by Integrator prior to becoming an Advanced Technology Provider or completing its Specialization Program, upon expiration of support for Software for which Integrator currently has under a support program, Integrator shall pay all applicable fees hereunder within thirty (30) days of invoice by Cisco. Software for which Integrator has under an existing support program shall not be renewed under the existing program but shall become part of this Exhibit.
- 6.4 Cisco will provide information necessary for prompt issuance of a purchase order or similar document by Integrator, when required. Integrator will provide a purchase order for the services defined herein no later than fifteen (15) days from Cisco's request.
- 6.5 Integrator is responsible for all applicable taxes, fees and duties associated with the delivery of services under this Exhibit.

## **7.0 TERMINATION/SUSPENSION OF PERFORMANCE.**

In addition to all rights and remedies which it may have under the Agreement, Cisco may suspend its performance or services hereunder for all Software covered under this Exhibit, whether the Software was purchased prior to or subsequent to the Effective Date of this Exhibit, immediately upon notice if (i) Integrator fails to pay for the services when due and fails to make such payment within fifteen (15) days after notice from Cisco of such past due payment, or (ii) if Integrator breaches the provisions of Section 8, hereof or (iii) for particular Software, if Cisco ends support for such Software or (iv) the Agreement terminates. If, at any time, Integrator fails to attain or maintain Advanced Technology Provider status or Specialization status, as required hereunder, with respect to a Software and/or geographic area applicable to Integrator, then Cisco shall have the right to suspend or terminate Integrator's distribution, support and other rights under the Agreement with respect to such Software(s) and/or geographic area(s). Upon expiration or termination as specified in this Exhibit or the Agreement, (i) all rights and licenses of Integrator hereunder shall terminate, (ii) Integrator shall immediately discontinue all representations that it provides Cisco-supported maintenance services for the Software, and (iii) End User access to Cisco.com shall terminate.

## 8.0 SOFTWARE LICENSE.

Integrator acknowledges that it may receive Software as a result of Services provided under this Exhibit. Integrator agrees that it is licensed to distribute through sublicensing such Software and Maintenance, Major and Minor Releases for which it has paid the applicable license fees under this Exhibit and subject to the terms and conditions of the Software license granted with the original license of the Software. Integrator shall not copy, in whole or in part, Software or Documentation; modify the Software, reverse compile or reverse assemble all or any portion of the Software; or rent, lease, distribute, sell, or create derivative works of the Software. Integrator shall not upgrade to a feature set other than that which was licensed at the time of original Software license unless applicable license and support fees are paid. To the extent required by law, at End User's request, Cisco shall provide End User with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee. End User shall observe strict obligations of confidentiality with respect to such information.

## 9.0 GENERAL.

- 9.1 **Disclosure of Contract Information.** Integrator acknowledges and agrees that in no event shall any of the information contained in this Exhibit, Integrator's Agreement number, [Cisco.com](http://Cisco.com) access information, or Integrator's access number, be disclosed to any third party. Such information shall be considered Confidential Information under the Agreement.
- 9.2 **Representations and Warranties.** Integrator shall not make any representations or warranties on behalf of Cisco, except as expressly authorized herein or as expressly authorized by Cisco in writing. Neither Integrator nor Cisco will make any obligation to provide services to End Users on behalf of the other, nor commit the resources of the other to End Users.
- 9.3 **Renewal of Support Agreements.** Prior to expiration of a service contract: (a) Cisco, or its authorized agents, may send reminders to both Integrator and its End User; and (b) upon request by Cisco, Integrator will reconfirm the End User's identity and service contract numbers of the expiring service contract(s); and (c) Integrator will (i) initiate the renewal process with its End User and forward to Cisco the completed renewal with Purchase Order or (ii) notify Cisco of Integrator's intent to cancel Services. If, upon the expiration date of Cisco services for the Equipment, Cisco has not received a purchase order for the renewal, Cisco, or its authorized agents, may contact the End User to arrange for the renewal of Cisco services for the subject Equipment either directly with Cisco or via another Cisco-authorized reseller.

**EXHIBIT I — APPENDIX A  
CISCO PROBLEM PRIORITIZATION AND ESCALATION GUIDELINE**

To ensure that all problems are reported in a standard format, Cisco has established the following problem severity definitions. These definitions will assist Cisco in allocating the appropriate resources to resolve problems. Integrator must assign a severity to all problems submitted to Cisco.

**PROBLEM SEVERITY DEFINITIONS:**

- Severity 1: End User's production network is down causing critical impact to business operations if service is not restored quickly. No workaround is available. Cisco, Integrator and service Provider or End User are willing to commit full-time resources around the clock to resolve the situation.
- Severity 2: End User's production network is severely degraded impacting significant aspects of business operations. No workaround is available. Cisco, Integrator and End User are willing to commit full-time resources during business hours to resolve the situation.
- Severity 3: End User's network performance is degraded. Network functionality is noticeably impaired but most business operations continue.
- Severity 4: End User requires information or assistance on Cisco product capabilities, installation, or configuration.

Cisco encourages Integrator to reference this guide when Integrator-initiated escalation is required. If Integrator does not feel that adequate forward progress or the quality of Cisco service is satisfactory, Cisco encourages Integrator to escalate the problem ownership to the appropriate level of Cisco management by asking for the TAC Duty Manager.

**CISCO ESCALATION GUIDELINE:**

Elapsed Time	Severity 1	Severity 2	Severity 3	Severity 4
1-Hour	Customer Engineering Manager			
4-Hour	Technical Support Director	Customer Engineering Manager		
24-Hour	Vice President Customer Advocacy	Technical Support Director		
48-Hour	President (CEO)	Vice President Customer Advocacy		
72-Hour			Customer Engineering Manager	
96-Hour		President (CEO)	Technical Support Director	Customer Engineering Manager

Note: Severity 1 problem escalation times are measured in calendar hours 24 hours per day, 7 days per week. Severity 2, 3 and 4 escalation times correspond with Standard Business Hours.

The Cisco Manager to which the problem is escalated will take ownership of the problem and provide the Integrator with updates. Cisco recommends that Integrator-initiated escalation begin at the Technical Manager level and proceed upward using the escalation guideline shown above for reference. This will allow those most closely associated with the support resources to correct any service problems quickly.

**Accessing TAC:**

North America, South America:	+1-800-553-2447 or +1-408-526-7209
Europe, Middle East, and Africa:	+32-2-704-5555
Asia Pacific:	+1-800-805-227 or +61-2-935-4107

**EXHIBIT I — APPENDIX B  
CISCO CONNECTION ONLINE  
PARTNER INITIATED CUSTOMER ACCESS (PICA)**

**Integrator Responsibility**

Integrator shall nominate two (2) employees (“CCO Access Administrators”) who may use the Cisco.com administrative tools to grant Service Provider or End User to Cisco.com.

Integrator shall forward the following information to Cisco (via electronic mail to “ccoteam@cisco.com”), as soon as practicable, for the nominated persons:

1. Current Service Agreement number with Cisco;
2. Cisco.com user ID(s); and
3. Internet email addresses (if established).

The CCO Access Administrators will be responsible for:

1. providing Cisco.com access to Service Providers or End Users;
2. assisting Cisco in verifying Cisco.com users previously registered, whereby Integrator submitted Service Provider or End User Cisco.com Access Requests on behalf of their End Users. Assist in moving End Users from the older process to the PICA process;
3. disabling End User’s PICA access when a Service Provider or End User is no longer eligible; and
4. ensuring that the Service Providers and End Users only download Software for use with Software for which applicable support fees have been paid, and shall pay to Cisco applicable support fees for any Software for which support is received through use of the procedures described in this Appendix B, regardless of whether or not such Software was originally sold by Integrator to End User.

**Integrator Employee Registrations**

Integrator’s employees must continue to use the existing system of registering (i.e. with their Service Agreement number). To ensure correct access, Integrator’s employees should never use a special PICA account number for registering online.

**End User Eligibility for Cisco.com Access**

Service Provider’s and End User’s access to Cisco.com may commence when the Service Provider or End User, as the case may be, has purchased a Cisco Software, or service for Cisco Software(s) from the Integrator, and has a support agreement with that Integrator.

**PICA Process Overview**

1. Cisco will assign a unique account number prefix to the nominated person(s) if one does not already exist.
2. This prefix is the basis for the new account numbering scheme for the Service Provider or End Users (i.e. FJLxxxx). Each End-User will have a different number following the prefix (i.e. FJL2001,FJL2004,FJL 2035 etc )
3. If the Integrator wishes to provide Service Provider or End User access to Cisco.com, the CCO Access Administrator must log onto Cisco.com and use the PICA administration tool to provide such access.
4. Once the PICA administration tool option is selected, three fields will appear. The first field is an input field for the name of the Service Provider or End User, the second field is a selectable list of countries and the third is a selectable field for Software download entitlement for this End User (either yes or no).

5. When correctly entered, selected and executed, Cisco.com will generate a unique account number just for that Service Provider or End User, which will be displayed on-screen (e.g. FJL1012).
6. After the account number is generated online, the account number may only be published within the Service Provider or End User organization. Only one number per Service Provider or End User organization is normally permitted.
7. Any number of Service Provider or End User employees may register on Cisco.com with that account number (e.g. FJL1012). A unique user ID will be generated for each user that registers.
8. For security reasons, generic or group accounts are not permitted under any circumstances.
9. For each registration performed, an email can be automatically sent to the CCO Access Administrator with the newly registered user's online details, as entered.
10. Disabling Service Provider or End User Cisco.com access will also be an option on the administrative tools.

**EXHIBIT I – APPENDIX C**

**ATP/Specialization Guideline**

The following table shows the types of ATPs or Specializations necessary to support specific Software.

<b>Software</b>	<b>Qualification / Certification Requirement</b>
ICSG Software Applications / Contact Center S/W Applications	Unified Customer Contact Enterprise and / or IPCC ATP
ICD and IP IVR Software Applications	Unified Communications Specialization
Cisco Unified MeetingPlace	Rich Media Communications ATP

**EXHIBIT I — APPENDIX D  
CISCO BRAND SERVICES RESALE**

This appendix supplements the Agreement and all the terms and conditions of the Agreement apply to this appendix; provided that, to the extent there is a conflict between the Agreement and this appendix, the terms of this appendix take precedence over the terms and conditions of the Agreement with regard to the subject matter described herein. All capitalized words have the meaning ascribed to them in Appendix A (Definitions) or as defined in the Agreement.

**1.0 SCOPE**

This appendix describes the terms and conditions for (a) Integrator's resale of Services to End Users, (b) Cisco's direct delivery of the Services to End Users, and (c) Cisco's Support to Integrator. At all times, Cisco shall perform the Services on Integrator's behalf. In no event will Integrator be deemed to be an agent of Cisco.

**2.0 PROCEDURE TO RESELL TECHNICAL SUPPORT SERVICES**

Integrator is authorized on a non-exclusive basis to resell Technical Support Services to End Users in accordance with the Agreement and this appendix. Integrator may request such Services as follows:

- 2.1 Integrator will initiate its request by providing Cisco the following information via the Ordering Tools or Service Contract Center:
  - 2.1.1 all relevant End User information;
  - 2.1.2 a preliminary Equipment List that includes all of the End-User's Product information to be covered by the Services, including Cisco serial numbers; and
  - 2.1.3 a valid Purchase Order from Integrator to Cisco.
- 2.2 Upon Cisco's receipt of the information in Section 2.1 above, Cisco will:
  - 2.2.1 validate Product model(s) and serial numbers;
  - 2.2.2 provide an Equipment List and Maintenance Contract Number to Integrator; and
  - 2.2.3 schedule to start providing Services on the date stated in the Equipment List, which may be up to sixty (60) days following the date of the Purchase Order acceptance by Cisco.

**3.0 PROCEDURE TO RESELL ADVANCED SERVICES**

- 3.1 Integrator is authorized on a non-exclusive basis to resell Advanced Services to EndUsers in accordance with the Agreement and this appendix. Integrator may request such Services as follows:
  - 3.1.1 Integrator will initiate its request for Advanced Services by providing Cisco with a request for proposal (RFP) that includes all relevant End User information and requirements for the requested Advanced Services.

- 3.1.2 Upon Cisco's receipt of the RFP, Cisco will provide to Integrator a quote for Services ("Quote"). A valid Quote will identify (a) the Services and any deliverables (as applicable from the relevant Services Description), (b) the respective responsibilities of Cisco, Integrator and End User, (c) any special terms and conditions, (d) the price for such Services, and (e) the period during which such Services will be provided. Each Quote must (i) be signed by a duly authorized representative of Cisco, and (ii) have a unique Cisco reference number. No Quote will be valid without an accompanying Cisco reference number.
- 3.1.3 For Integrator's resale of the Advance Services described in the Quote, Integrator will issue to Cisco a Purchase Order referencing the valid Quote.
- 3.1.4 Upon Cisco's acceptance of the Purchase Order, Cisco will:
- (a) validate the Cisco reference number referred in the Purchase Order;
  - (b) assign a particular contract number for the Services to be performed; and
  - (c) schedule to start providing the Services within sixty (60) days following the date of Cisco's acceptance of the Purchase Order.

#### **4.0 CISCO'S RIGHTS AND OBLIGATIONS**

- 4.1 Cisco.com Access. Cisco will provide Integrator with an appropriate level of partner access to Cisco.com. This system provides Integrator with technical and general information on Products, as well as access to Cisco's on-line Software Center library.
- 4.2 Resale of Services. Cisco will make available the Services listed at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/) for resale by Integrator. Integrator may distribute these Service Descriptions to its End Users. Cisco may provide copies of any of the Services Descriptions to Integrator or an End User. Services are subject to the availability limitations specified in each Services Description and/or Quote.
- 4.3 Services to Be Provided. For each Service purchased by Integrator, Cisco will make available to End User, on Integrator's behalf, the Services described in the applicable Services Description and/or the Quote.
- 4.4 Warranty. For the duration of the Cisco warranty period, Cisco will make available Bug Fixes and Hardware replacement Support to Integrator as follows:
- 4.4.1 Bug Fixes.
- (a) When required, Cisco will make new Software available to Integrator to correct a problem, or provide a network-bootable Software image, as determined by Cisco.
  - (b) Distribution Rights. Cisco grants Integrator the right to distribute Bug Fixes to its End Users entitled to such warranty-related support, provided each such End User is currently licensed to use the Software.

- 4.4.2 Hardware Support. Cisco will replace Products in accordance with (a) the warranty terms set forth in the published Product warranty provided with the original Product, and (b) in conformance with Cisco's Return Material Authorization (RMA) process.
- 4.5 Inspection Fee. In order to be eligible to receive the Services as set out herein for (a) Products that have not been previously supported, (b) Products for which support has lapsed, or (c) Other Products, the following will apply:
  - 4.5.1 Cisco may charge an inspection fee for Products and Other Products in accordance with Cisco's standard fee schedule on the Price List in effect at the time of inspection (any related upgrades, replacements, repairs, or troubleshooting are excluded); and
  - 4.5.2 Integrator shall provide Cisco with such information as Cisco may require to ensure that a valid Software license exists for Software to be supported. If a valid Software license does not exist, Integrator shall pay Cisco the Software license fee for the Software.
- 4.6 Survey and Inventory Review. Cisco reserves the right to survey an End User for use in ensuring End User's satisfaction with (a) the Services, and (b) Integrator's and/or Cisco's Support. From time-to-time, Cisco will be entitled to perform an inventory review of an End User's installed base and review serial numbers and other records (upon reasonable advance notice) to validate entitlement. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. For such purposes, Integrator shall timely provide Cisco with End User contact and other relevant information. Upon notice to Integrator, Cisco will be entitled to suspend or terminate any portion of a Service in instances when it is unable to perform an inventory review or otherwise verify End User's entitlement to the Service.

## **5.0 INTEGRATOR RIGHTS AND OBLIGATIONS**

- 5.1 Integrator will complete the Business Partner Readiness Assessment prior to resale of any Services hereunder.
- 5.2 Prior to accepting a purchase order from an End User, Integrator shall ensure End User is aware of the contents of the relevant Services Descriptions and End User Obligations by either referring the End User to these documents located at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/) or providing End User with a current copy of these documents.
- 5.3 Integrator is responsible for ensuring that End User utilizes Software for use with Products for which applicable Services and license fees have been paid.
- 5.4 Integrator will provide to End User confirmation and registration materials for the Services to be performed by Cisco on Integrator's behalf, including, but not limited to, a copy of the Equipment List and Maintenance Contract Number.
- 5.5 Integrator may take the First Call from the End User and may open a case with Cisco on behalf of the End User using the applicable Maintenance or other Contract Number(s) and Cisco serial number(s). At all times, End User may call Cisco directly for support.
- 5.6 Equipment List:

- 5.6.1 Integrator shall ensure that all Products (including serial numbers) for which Services are being provided are listed in the Equipment List(s).
- 5.6.2 Integrator must provide Cisco with at least thirty (30) days advance notice of requested addition(s) to the Equipment List. In addition, at least thirty (30) days advance notice to Cisco is required for Product relocations and service level/Product configuration changes, when applicable. Integrator shall notify Cisco in writing (via facsimile, electronic mail or using Cisco.com) of any Products on the Equipment List that End User has moved to a new location.
- 5.6.3 Integrator may revise an Equipment List to account for new Products, service level upgrades and Product configuration changes by submitting a Purchase Order to Cisco that requests such revisions. Such Purchase Orders are subject to Cisco's acceptance and any Services requested are subject to availability. For the requested changes, Cisco will charge the pro-rated difference from the date the change is requested to the end of the impacted Equipment List's term.
- 5.7 Integrator will manage and escalate, in accordance with the Cisco Severity and Escalation Guideline, all calls taken by Integrator on behalf of the End User.
- 5.8 Integrator's Warranty Service. Integrator shall provide to its End Users, at no additional charge, all warranty services applicable to the Products when they were purchased by End User for a minimum of the warranty period set forth in the published Product warranty provided with the original Product. The warranty will commence upon shipment to the Integrator or as otherwise stated in the Product warranty statement shipped with the original Product. The warranty services provided by Integrator must include, at a minimum, the following Software and Hardware replacement services:
- 5.8.1 Integrator will distribute Bug Fixes to the End User during the warranty period.
- 5.8.2 Integrator will meet the replacement obligations stated in the then-current published Product warranty applicable to the particular Product sold to the End User.
- 5.8.3 Returns Coordination. For Products returned to Cisco for replacement, Integrator will:
- (a) Coordinate the return of all failed parts, freight and insurance prepaid, to the location designated by Cisco. For any Products replaced pursuant to the Product warranty terms, Integrator shall return failed/defective Products within ten (10) days after receipt of the replacement Product, otherwise, Cisco may invoice Integrator, and Integrator will pay, the then-current list price of the Product, less Integrator's standard contract discount; and
  - (b) (i) properly package all Products prior to shipping to Cisco, (ii) include a written description of the failure; (iii) describe any changes or alterations made to the Product, and (iv) tag each returned Product with the RMA transaction number provided by Cisco. Products returned to Cisco must conform in quantity and serial number to the RMA request.

5.9 Unsupported End User List. If Integrator elects not to support Products under this appendix at the time of a Product purchase or if, for any reason, a Product becomes unsupported at some point after the Product's initial deployment, Integrator shall provide Cisco with the End User's information, including but not limited to End User name, address and phone number, within 90 days of the Product becoming unsupported. Integrator authorizes Cisco to contact the End User for the express purpose of contracting directly with End User for support services for the unsupported Product identified by Integrator.

5.10 Renewals. Prior to expiration of a service contract: (a) Cisco, or its authorized agents, may send reminders to both Integrator and its End User; and (b) upon request by Cisco, Integrator will reconfirm the End User's identity and service contract numbers of the expiring service contract(s); and (c) Integrator will (i) initiate the renewal process with its End User and forward to Cisco the completed renewal with Purchase Order or (ii) notify Cisco of Integrator's intent to cancel Services. If, upon the expiration date of Cisco services for the Equipment, Cisco has not received a purchase order for the renewal, Cisco, or its authorized agents, may contact the End User to arrange for the renewal of Cisco services for the subject Equipment either directly with Cisco or via another Cisco-authorized reseller.

## 6.0 PRICE AND PAYMENT TERMS

### 6.1 Discounts.

6.1.1 The price for Technical Support Services and Remote Management Services to Integrator from the Effective Date through September 30, 2007, and for each subsequent twelve month period (October 1st through September 30th), is calculated by applying Cisco's then-current service list price less the applicable discount calculated during the applicable period according to the Attach Rate methodology described in the following Section.

6.1.2 Determination of Attach Rate. Attach Rate is calculated by Integrator's total monetary value (U.S. Dollars) of all serviceable Hardware items sold by Integrator with Cisco service coverage attached in the current Measurement Period and translated to SMARTnet Global List Price at the Next Business Day ("NBD") Service level) divided by the total monetary value (U.S. Dollars) of all serviceable Hardware items sold by Integrator with Cisco service coverage available to be attached in the current Measurement Period and translated to SMARTnet Global List Price at the Next Business Day ("NBD") Service level. The result is rounded for purposes of Attach Rate determination. For example, an Attach Rate of 74.95% is rounded up to 75% and an Attach Rate of 74.94% is rounded down to 74.9%.

Attach Rates and Discount from the Effective Date through September 30, 2007:

Attach Rate	Discount
0% to <60%	15%
60% to <75%	20%
≥75%	25%

Attach Rates and Discount for each subsequent twelve month period after September 30, 2007:

Attach Rate	Discount
0% to <60%	17%
60% to <70%	20%
≥70%	23%

Examples:

In the applicable twelve (12) month period Integrator purchased 8 devices (6 of Device A and 2 of Device B) and sold support on 4 of Device A and 2 of Device B. The NBD price for Device A is \$50 and for Device B is \$10. The Attach Rate is actual Service sold (4x\$50 plus 2x\$10) divided by total dollar value of Service (6x\$50 plus 2x\$10).  $220/320 = 68.8\%$  which represents the Attach Rate with a corresponding discount of 20%.

Multi-Year Scenario: In the applicable twelve (12) month period Integrator purchased 1 device (1 of Device A) and sold 3 year support on the 1 device. The NBD three year price for the Device A is \$150. The Attach Rate is calculated by dividing the multi-year price by the number of years covered (in this case, three years or  $\$150/3$ ) and crediting the first year Attach Rate actual performance and Attach Rate opportunity (\$50). The Attach Rate actual performance is the one year NBD value of service sold (\$50) divided by the one year NBD value of the total dollar value of Service (\$50) and represents an Attach Rate of 100% with a corresponding discount of 25%.

- 6.1.3 Cisco will review Integrator's actual service sales Attach Rates at the time the Integrator renews the Agreement with Cisco and at twelve month intervals during the term of the Agreement. Cisco reserves the right to adjust Integrator's resale discount at the time of review. Any adjustment to the resale discount will be communicated in writing to the Integrator by Cisco.
  - 6.1.4 Integrator must have purchased Product for a minimum of twelve months in order to determine the Attach Rate. If Integrator has less than twelve months of Product purchases, Integrator's discount will be the minimum discount under the applicable Attach Rate table.
  - 6.1.5 Upon renewal of the Equipment List(s), the discount will be the corresponding discount associated with the Attach Rate.
  - 6.1.6 The discounts listed above are not applicable for the initial twelve (12) month period of support for Other Products by Integrator when Integrator resells Cisco brand services. Integrator discount for Other Products shall be fifteen percent (15%) during the initial twelve (12) month of support by Integrator.
- 6.2 The discounts listed above do not apply to Integrator's resale of Advanced Services. Integrator's discount for Advanced Services shall be stipulated in the Quote provided by Cisco's Performance Metrics Central ("PMC"). Integrator's Attach Rate performance will be calculated and updated monthly and available at Cisco's PMC tool on Cisco.com. From the PMC tool, Integrator will be able to view the status of Attach Rate on an on-going basis.

- 6.3 All Services are invoiced annually in advance and payable within thirty (30) days from the invoice date in U.S. Dollars unless otherwise agreed to in the Agreement in writing.
- 6.4 All prices in the Equipment List(s) are exclusive of any taxes and duties which, if applicable, shall be paid by Integrator. Applicable taxes are billed as a separate item. Integrator will be billed for time and material fees and the Product list price of replaced Products not returned to Cisco.
- 6.5 Integrator is free to determine its resale prices unilaterally. Integrator understands that neither Cisco, nor any employee or representative of Cisco, may give any special treatment (favorable or unfavorable) to Integrator as a result of Integrator's selection of resale prices. No employee or representative of Cisco or anyone else has any authority to specify what Integrator's resale prices for the Services must be, or to inhibit in any way, Integrator's pricing discretion with respect to the Services.
- 6.6 Support for Other Products. Integrator may support Other Products if Integrator provides Cisco with the following:
  - 6.6.1 a notification of Integrator's intent to support Other Products, and
  - 6.6.2 a letter from the End User that requests the Service from the Integrator and has an attached list of the Product(s) and serial number(s) to be supported.

## **7.0 GENERAL**

- 7.1 Entitlement. Integrator acknowledges that Cisco has the right to verify an End User's entitlement to receive Services, and that End User is entitled to receive Services only for Products for which Integrator has paid the applicable license and support fees to Cisco. Integrator agrees to assist Cisco with enforcement of End User entitlement as necessary, including, without limitation, providing serial number(s) to Cisco and enabling Cisco to undertake inventory review(s), as set forth in section 4.6 above.
  - 7.2 Disclosure of Contract Information. In addition to all other obligations of confidentiality, Integrator shall not disclose to any third party (a) any of the information contained in this appendix, or (b) Integrator's Agreement number.
  - 7.3 Software License. Integrator acknowledges that it may receive Software as a result of services provided under this appendix. Integrator agrees that it is licensed to distribute such Software only for Products covered under this appendix and subject to the non-transferable, non-reusable terms and conditions of the Software license granted with each original purchase of the Products and for which all applicable fees have been paid. Integrator shall not upgrade any End User to a feature set other than that which was licensed at the time of each End User's original Product purchase unless applicable license fees are paid to Cisco.
  - 7.4 Third Party Services. Cisco reserves the right to subcontract the provision of all or part of the Services to a third party.
  - 7.5 Term, Termination and Suspension of Performance.
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- 7.5.1 In addition to all rights and remedies which it may have under the Agreement, Cisco may terminate this appendix with respect to some or all Products covered under this appendix, whether or not Products were purchased prior to or subsequent to the Effective Date, or suspend performance required of Cisco under this appendix, immediately upon Notice if:
- (a) Integrator fails to provide the Unsupported End User List pursuant to Section 5.9 within thirty (30) days after the end of the previous quarter and after Notice from Cisco;
  - (b) Integrator fails to pay for the Services when due and fails to make such payment within fifteen (15) days after notice from Cisco of such past due payment;
  - (c) Integrator breaches the provisions of Sections 7.2, 7.3 and/or any of the material provisions of this appendix and fails to remedy such breach within thirty (30) days after written notification by Cisco to Integrator of such breach;
  - (d) Cisco discontinues Service for one or more of the Products for whatever reason or elects to discontinue Service that is the subject of this appendix; or
  - (e) the Agreement terminates.

Upon expiration or termination as specified in the Agreement, (i) all rights and licenses of Integrator hereunder shall terminate, (ii) Integrator shall not make any representation that it provides the Services described hereunder, and (iii) End User access to Cisco.com granted hereunder shall terminate. Cisco will have the right to seek payment for Services directly from the End User in the event Integrator does not remit payment to Cisco pursuant to the payment terms.

7.5.2 Either party may at any time terminate this appendix for convenience, for any reason or no reason, by providing the other party with ninety (90) days prior written notice of termination.

7.5.3 This appendix will be coterminous with the Agreement.

7.5.4 In the event Cisco's support obligations to Integrator with respect to an Equipment List for which payment has been received by Cisco prior to the expiration of the term set out in Section 7.5.1(d), 7.5.2, or 7.5.3 of this appendix extend beyond such term, as applicable; and provided that Integrator complies with the terms of the Agreement and its obligations in this appendix, Cisco will provide support to Integrator for the term of such Equipment List provided that the maximum period of support shall not exceed three (3) years from the date of such Equipment List.

7.6 Representations and Warranties. Integrator will not make any representations or warranties on behalf of Cisco, except as expressly authorized herein or as expressly authorized by Cisco in writing. Neither party will create any obligation to End Users on behalf of the other, nor commit the resources of the other to End Users.

- 7.7 Independent Contractors. The relationship of Cisco and Integrator established by this appendix is that of independent contractors, and nothing contained in this appendix shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other, (b) constitute the parties as joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (c) allow Integrator to create or assume any obligation on behalf of Cisco for any purpose whatsoever. All financial obligations associated with Integrator's business are the sole responsibility of Integrator. All sales and other agreements between Integrator and its End Users are Integrator's exclusive responsibility and shall have no effect on Integrator's obligations under this Agreement. Integrator shall be solely responsible for, and shall indemnify and hold Cisco free and harmless from, any and all claims, damages or lawsuits (including Cisco's attorneys' fees) arising out of the acts of Integrator, its employees or its agents.
- 7.8 Indemnification. Integrator hereby indemnifies and holds Cisco harmless from any claim, loss, damage or expense, including reasonable court costs and attorneys' fees, resulting from any claim made by an End User against Cisco hereunder as a third party beneficiary or otherwise. This Section 7.8 shall not limit Cisco's obligations, subject to the terms and conditions of this Agreement, to provide the Services described herein.
- 7.9 Survival. Sections 7.2, 7.5.4 and 7.8 of this appendix shall survive termination of this appendix.

## **8.0 CONTRACTING WITH U.S. FEDERAL GOVERNMENT AGENCIES**

The following additional provisions or modifications will only apply when Integrator contracts with U.S. Federal Government Agencies and has been granted the resale rights in Section 2 ("Scope") of the Agreement:

- 8.1 The definition for Services shall read as follows:
- "Services" mean the Cisco brand Services described in the corresponding Services Description, listed on the then current Price List and which are available to Integrator for resale to an End User in accordance with the terms of this appendix. In the event Services are resold to Federal Government agencies, such Services are considered "commercial items" as defined under the Federal Acquisition Regulation ("FAR") 2.101.
- 8.2 Integrator will not grant End User any greater rights to Cisco Support than Cisco grants to Integrator in the Agreement and appendix.
- 8.3 Any partial year support agreements (period of performance less than twelve (12) months) will include an additional ten percent (10%) adjustment; and/or requests for any payment term other than pre-paid twelve (12) months in advance will include an additional ten percent (10%) adjustment.
- 8.4 The Other Product discount of fifteen (15%) percent shall not apply. Integrator's earned discount shall apply.

## **9.0 WARRANTY**

NOTHING IN THIS EXHIBIT WILL AFFECT THE WARRANTIES PROVIDED WITH ANY HARDWARE PURCHASED OR SOFTWARE LICENSED BY INTEGRATOR AND/OR END USER. ANY AND ALL SERVICES PROVIDED HEREUNDER WILL BE PERFORMED IN A

WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF THE PURPOSE IS KNOWN TO CISCO), SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW. INTEGRATOR MUST NOTIFY CISCO PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES. INTEGRATOR'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY WILL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THE APPLICABLE SERVICE ON THE EQUIPMENT LIST AND RETURN OF THE UNUSED PORTION OF THE FEES PAID TO CISCO BY INTEGRATOR FOR SUCH NON-CONFORMING SERVICES. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS EXHIBIT. INTEGRATOR SHALL NOT MAKE ANY WARRANTY COMMITMENT, WHETHER WRITTEN OR ORAL, ON CISCO'S BEHALF.

#### **10.0 CHANGE IN SCOPE**

Cisco reserves the right to make changes to the scope and content of this appendix, including terminating the availability of a given Service, at any time upon ninety (90) days prior written notice and such changes shall become effective upon the next October 1st. If Integrator does not agree with a change of scope or content, Integrator may terminate this appendix in accordance with Section 7.5.

## EXHIBIT I – APPENDIX E DEFINITIONS

The following definitions shall apply to this appendix:

**"Advanced Services"** means the proactive Services identified as Advanced Services at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/).

**"Attach Rate"** measures the service sold and entitled prior to the subsequent Aug 1st – July 31st ("Measurement Period") on Products shipped from Cisco during the twelve (12) month period from May 1st-April 30th, three months prior to the start of the subsequent Measurement Period. Service coverage which expires prior to the subsequent Measurement Period must have been active for a minimum of three-hundred sixty-five (365) days to be included in the numerator of the Attach Rate calculation.

**"Business Partner Readiness Assessment ("BPRA")"** means an assessment performed by Cisco to measure the maturity of Integrator's e-business capabilities.

**"Bug Fix"** means an error correction, patch or workaround for the Software which Cisco provides to Integrator.

**"End User Obligations"** means the obligations posted at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/) with which End Users shall comply when purchasing Services, in addition to the End User responsibilities set out in the Services Descriptions.

**"Equipment List"** means the list of Hardware and/or Software for which Cisco provides Services.

**"First Call"** means the initial call made by the End User when requesting assistance with Product.

**"Maintenance Contract Number"** means the reference number assigned by Cisco for each Service purchased from Cisco.

**"Ordering Tool"** means a tool that Integrator may use to order Service detailed herein via Cisco.com.

**"Other Product"** means Product which an End User acquired from a source other than Integrator.

**"Remote Management Services"** means the monitoring services identified as Cisco Unified Communications Remote Management Services at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/).

**"Services Description"** means the description of the Services, as of the purchase date of such Services, to be made available by Cisco to End Users through Integrator, and the terms and conditions under which Cisco provides those Services. Each available Service has its own Service Description, which can be found at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/).

**"Support"** means the assistance provided by Cisco to Integrator under the terms of this appendix.

**"Service Contract Center"** means a tool on Cisco.com that Integrator may use to order Service, renew orders and asset management of its installed base.

**"Services"** mean the Cisco brand Services available for resale by Integrator, which can be found at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/).

**"Technical Support Services"** means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at [www.cisco.com/go/servicedescriptions/](http://www.cisco.com/go/servicedescriptions/).

STANDARD COMMERCIAL LEASE

ARTICLE 1.00 BASIC LEASE TERMS

1.01 Parties. This lease agreement ("Lease") is entered into by and between the following Landlord and Tenant:

Vantage Development #21, Inc., a Texas corporation ("Landlord").  
I-Sector, a Delaware corporation ("Tenant").

1.02 Leased Premises. In consideration of the rents, terms, provisions and covenants of this Lease, Landlord hereby leases, lets and demises to the Tenant the following described premises ("Leased Premises") as shown on Exhibit A attached hereto, located within the Building or Project referenced below and located on the Land as described on Exhibit B attached hereto (the "Land");

<b>"Building" or "Project":</b>	Waters Ridge Tech Center I
Building or Project Square Footage:	227,495
<b>"Leased Premises":</b>	1955 Lakeway Drive,
Leased Premises Square Footage:	Suite 220 24,081
City, State, Zip Code:	Lewisville, Texas 75057,

together with the right to use, in common with others the Common Areas (as defined in Section 2.06), for the Term specified herein, all upon and subject to the terms and conditions set forth herein.

Landlord and Tenant acknowledge that the square footage of the Leased Premises and Building are as set forth above.

1.03 Term. The term (the "Term") of this Lease shall commence on the date Landlord delivers the Leased Premises to Tenant with the Landlord Improvements (as defined in Section 6.01) complete in accordance with the Plans (as defined in Section 6.01) (the "Commencement Date") and terminate seventy two (72) months thereafter (the "Termination Date"). For purposes of this Section 1.03, complete means a condition that allows Tenant to occupy the Leased Premises and conduct its business therein. Tenant agrees that Landlord will not be liable to Tenant if Landlord does not deliver possession of the Leased Premises to Tenant on the Commencement Date and Landlord's non-delivery of the Leased Premises to Tenant on the Commencement Date will not change the terms of this Lease or the obligations of Tenant hereunder. If delivery of the Leased Premises is delayed, Landlord and Tenant agree that the Commencement Date will be delayed until possession of the Leased Premises is delivered to Tenant, in which event the Term will be automatically extended for a period of time equal to the delay in delivery of possession of the Leased Premises to Tenant. If delivery of possession of the Leased Premises is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Commencement Date and Termination Date. Any occupancy of the Leased Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease. If the Termination Date falls on a day other than the last day of a month, the parties agree that the Term shall be automatically extended by the number of days necessary to cause the Term to end on the last day of a month.

Notwithstanding the foregoing, if Landlord fails to deliver the Leased Premises to Tenant on or before July 1, 2004, and such failure does not result from an event of force majeure, act of God or any act or omission of Tenant, Tenant may terminate the Lease upon written notice to Landlord.

1.04 Base Rent and Security Deposit.

- a) Base Rent for the Leased Premises shall be:
  - Months 1-7: Abated
  - Months 8-24: \$13,048
  - Months 25-48: \$20,068
  - Months 49-72: \$22,074
- b) The Security Deposit to be deposited by Tenant shall be: \$14,786.00

**1.05 Addresses.**

Landlord's Address:

Vantage Companies  
2911 Turtle Creek Blvd.  
Suite 500  
Dallas, Texas 75219

Tenant's Address:

Prior to Commencement Date:  
15960 Midway Road, Suite 101  
Addison, Texas 75001  
Attn.: Mr. Paul Klotz

After Commencement Date:  
@ The Leased Premises  
Mr. Paul Klotz

**1.06 Permitted Use.** Tenant shall use the Leased Premises for general office, laboratory and research and development uses, warehousing, equipment configuration, staging, shipping, receiving, remote network monitoring services, help desk services and other matters related or incident to Tenant's primary business and for no other purpose.

**ARTICLE 2.00 RENT**

**2.01 Base Rent.** Tenant agrees to pay monthly as Base Rent during the Term without notice, demand, deduction, counter-claim, set-off or abatement, the sum of money set forth in Section 1.04 of this Lease. Tenant shall pay one monthly installment of Base Rent on the date of execution of this Lease by Tenant for the eighth month's Base Rent and a like monthly installment shall be due and must be paid on or before the first day of the ninth calendar month and each month thereafter during the Term; provided, if the Commencement Date is a date other than the first day of a calendar month, the Base Rent set forth above will be prorated to the end of that calendar month, and all succeeding installments of Base Rent shall be payable on or before the first day of each succeeding calendar month during the Term. No payment by Tenant or receipt by Landlord of a lesser amount than the amount of Base Rent due will be deemed to be other than on account of the earliest past due installment of Base Rent required to be paid hereunder. Tenant agrees that no endorsement or statement on any check or in any letter accompanying any check or payment of Base Rent constitutes an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of Base Rent then due or to pursue any remedy available under this Lease, at law or in equity.

**2.02 Security Deposit.** Tenant shall deliver the Security Deposit to Landlord on the date of execution of the Lease by Tenant. The Security Deposit will be held by Landlord without liability for interest and as security for the performance of Tenant's covenants and obligations under this Lease, it being expressly understood that it is not an advance payment of Base Rent, Taxes and Insurance (as defined in Section 2.04), Operating Expenses (as defined in Section 2.06) or a measure of Landlord's damage upon an Event of Default (as defined in Section 11.01). Landlord may commingle the Security Deposit with its other funds. During the continuance of an Event of Default (as defined in Section 11.01), Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit, to the extent necessary, to make good any arrears of Base Rent, Taxes and Insurance, Operating Expenses, or pay any expense or liability incurred by Landlord as a result of the Event of Default. Provided Tenant delivers the Leased Premises to Landlord as required herein upon expiration or earlier termination of this Lease, Landlord shall return any remaining balance of the Security Deposit to Tenant within sixty (60) days following such expiration or termination of this Lease. If any portion of the Security Deposit is so used or applied, Tenant shall upon ten (10) days written notice from Landlord, deposit with Landlord by cash or cashier's check an amount sufficient to restore the Security Deposit to its original amount. If Landlord transfers its interest in the Leased Premises during the Term, Landlord shall assign the Security Deposit to the transferee and, upon delivery to Tenant of a copy of an assumption of Landlord's obligations hereunder, have no further liability for the return of or any matter relating to, such Security Deposit.

**2.03 Definitions.** For purposes of this Lease, (i) Tenant's Pro Rata Share shall be a fraction, the numerator of which is the number of square feet of floor area in the Leased Premises set forth in Section 1.02 and the denominator of which is the number of square feet of floor area in the Building or Project set forth in Section 1.02, provided, if the Project contains multiple buildings, and expenses (i.e. Taxes, Insurance and Operating Expenses) associated with operating such buildings can be directly attributed to a building, Landlord may utilize the square feet of floor area in such building as the denominator. Tenant's Pro Rata Share may be adjusted by Landlord in the future for changes in the physical size of the Leased Premises, Building or Project, and (ii) Additional Rent shall include (x) Taxes and Insurance, (y) Operating Expenses, and (z) all other amounts due Landlord from Tenant pursuant to the terms of this Lease.

**2.04 Taxes and Insurance.** Tenant agrees to pay without notice, demand, counter-claim, deduction, set-off or abatement of any kind Tenant's Pro Rata Share of all real property taxes and installments of special assessments (including dues and assessments by means of deed restrictions and/or owner's associations) lawfully levied or assessed against the Building and/or Project, and any and all insurance required herein or as Landlord deems reasonably necessary (specifically including fire and casualty, commercial general liability and rent loss [a/k/a business income] insurance) (collectively "Taxes and Insurance"). Landlord shall invoice Tenant monthly (in advance) for Tenant's Pro Rata Share of Taxes and Insurance commencing on the Commencement Date. Tenant's Pro Rata Share will be based upon Landlord's estimate of Taxes and Insurance for the current calendar year, provided, that in the event Landlord is required under a mortgage, deed of trust, underlying lease or loan agreement covering the Building or Project to escrow Taxes and Insurance, Landlord may but will not be obligated, to use the amount required to be escrowed as a basis for its estimate. To the extent the Commencement Date or Termination Date of the Lease is not on the first day of the calendar year or last day of the calendar year respectively, Tenant's liability for Taxes and Insurance is subject to a pro rata adjustment based on the number of days of any such year during which the Term is in effect. Tenant is not entitled to contest or appeal any value assessment rendered by applicable taxing authorities and waives all rights to receive notices of reappraisals. In no event shall Tenant be liable for any income or franchise taxes imposed upon Landlord unless such taxes are in substitution of the taxes set forth above.

**2.05 Operating Expenses.** Tenant agrees to pay without notice, demand, deduction, counterclaim, set-off or abatement of any kind, Tenant's Pro Rata Share of Landlord's operating expenses for the Building and/or Project as set forth in Section 2.06 ("Operating Expenses"). Landlord shall invoice Tenant monthly for Tenant's Pro Rata Share of the estimated Operating Expenses for each calendar year commencing on the Commencement Date and may adjust such share each subsequent year based upon anticipated Operating Expenses. Twice yearly Landlord is entitled to adjust the estimated Operating Expenses to reflect current or anticipated Operating Expenses.

Notwithstanding anything to the contrary set forth in this Section 2.05, when determining Tenant's Pro Rata Share of Operating Expenses for calendar years subsequent to the first full calendar year of the Term, Tenant's Pro Rata Share of Operating Expenses for such calendar years shall not increase more than five percent (5%) from the immediately preceding calendar year. Calculation of increases in Tenant's Pro Rata Share of Operating Expenses subsequent to the first full calendar year of the Term shall be on a cumulative basis, i.e. if Tenant's Pro Rata Share of Operating Expenses increases three percent (3%) from the immediately preceding calendar year, then Tenant's Pro Rata Share of Operating Expenses may increase seven percent (7%) for the immediately following calendar year. Provided, the foregoing cap on Tenant's Pro Rata Share of Operating Expenses shall not apply to utilities (water, sewer, gas, electricity and telephone) for the Common Areas and trash removal. Tenant's Pro Rata Share of such Operating Expenses (water, sewer, gas, electricity and telephone) shall always be based upon the actual amount of such expenses. Provided further, if the Building or Project is not fully leased, with respect to calculating the foregoing cap, Landlord will be entitled to gross-up management fees as if the Building or Project had been fully leased and fully assessed by all taxing authorities for the previous calendar year.

Provided no Event of Default exists, Tenant may, at its own expense (except as set forth below), audit Landlord's books relevant to the Operating Expenses. With respect to such audit, Tenant 1) may review Landlord's books during office hours, 2) must perform such audit at the location of Landlord's books, 3) must request such audit within sixty (60) days of receipt of its annual reconciliation of Operating Expenses, 4) must deliver to Landlord a copy of the results of such audit within fifteen (15) days of its completion, and 5) may not audit the same calendar year more than one time. Assignees of Tenant may only audit periods for which they occupy the Leased Premises and subtenants of Tenant are not entitled to any audit rights.

If an audit reveals that Landlord has over charged Tenant for its Pro Rata Share of Operating Expenses by 3% or more Landlord shall reimburse Tenant its reasonable documented out-of-pocket expenses associated with such audit along with the amount by which Tenant overpaid.

**2.06 Definition of Operating Expenses.** The term "Operating Expenses" includes all commercially reasonable expenses incurred by Landlord with respect to the operation, maintenance, repair and replacement of the Common Areas (as defined below), including, but not limited to maintenance, repair and replacement costs necessary for upkeep (including materials and supplies necessary therefore);

charges for water, sewer, gas, electricity and telephone; cleaning, including janitorial services and supplies; landscape maintenance; painting (within the Common Areas and the exterior of the Building); trash collection; pest control; security; licenses, permits and inspection fees; contractor's fees; professional service and management fees; the cost of equipping and maintaining a management office; wages and benefits payable to employees of Landlord whose duties are directly connected with the operation of the Building or Project; personal property taxes for Landlord's personal property within the Common Areas; fees payable to tax consultants and/or attorneys for contesting taxes; the cost, including interest, amortized over its useful life, of any capital improvement made to the Common Areas by Landlord (i) pursuant to its obligations hereunder, or (ii) after the date of this Lease which is required by any Legal Requirement (as defined in Section 3.03) that was not applicable at the time the Building or Project was constructed; the cost including interest, amortized over the period of time necessary for such device or equipment to pay for itself, of installation of any device or other equipment which improves the operating efficiency of any system within the Common Areas and thereby reduces Operating Expenses.

The term Operating Expenses does not include the following: Taxes and Insurance, repairs, restoration or other work occasioned by fire, wind, the elements or other casualty; expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses and expenses for the renovating of space for new tenants; interest or principal payments on any mortgage or other indebtedness of Landlord; ground rent; compensation paid to any employee of Landlord other than maintenance and property management personnel directly associated with the operation and maintenance of the Building or Project; any depreciation allowance or expense (except for depreciation of capital improvements and equipment specifically included within the definition of Operating Expenses); operating expenses which are the responsibility of Tenant or any other tenant of the Building or Project; or expenses which are for the benefit of a specific tenant and not all tenants of the Building or Project.

For purposes of this Lease "Common Areas" mean those areas within the Building or Project provided for the common use or benefit of all tenants generally and/or the public, such as parking areas, interior roads, sidewalks, landscaped areas, detention or retention ponds, common office facilities or meeting rooms, common equipment rooms, common satellite or antenna facilities, common mail rooms, corridors, restrooms, vending areas, lobby areas, and other Common Areas not included in or as shown as being part of the Leased Premises on Exhibit A.

**2.07 Reconciliation.** Within four (4) months following the close of each calendar year, Landlord shall provide Tenant an accounting showing in reasonable detail all computations of Taxes and Insurance and Operating Expenses due under Sections 2.04 and 2.05. If the accounting shows that the total of the monthly payments made by Tenant exceeds the amount of Taxes and Insurance and Operating Expenses due by Tenant, such amount will be credited against the next required payment of Taxes and Insurance and Operating Expenses. If the accounting shows that the total of the monthly payments made by Tenant is less than the amount due by Tenant, such accounting will be accompanied by an invoice for the additional amount. Notwithstanding any other provision in this Lease, during the year in which the Lease terminates, Landlord, prior to the Termination Date, is entitled to invoice Tenant for Tenant's Pro Rata Share of the excess Operating Expenses based upon the previous year's Operating Expenses. If this Lease terminates on a day other than the last day of a calendar year, the amount of any Taxes and Insurance and Operating Expenses payable by Tenant applicable to the year in which such termination occurs will be prorated on the ratio that the number of days from the commencement of the calendar year to and including the Termination Date bears to 365.

**2.08 Late Payment Charge.** Other remedies for nonpayment of Base Rent notwithstanding, if the monthly Base Rent payment is not in Landlord's possession on or before the tenth (10<sup>th</sup>) day of the month for which the Base Rent is due, or if any payment of Additional Rent due Landlord by Tenant is not received by Landlord on or before the tenth (10<sup>th</sup>) day of the month next following the month in which Tenant was invoiced, such amount shall bear interest at the lesser of (i) the highest lawful rate per annum or (ii) the rate of one percent (1%) per month until paid for each late payment that occurs more than once in any twelve (12) month period during the Term. In addition, Landlord is entitled to charge one hundred dollars (\$100.00) for each check or payment, which is not honored by Tenant's bank. Said charge to be in addition to any other amounts owed under this Lease.

**2.09 Holding Over.** If Tenant does not vacate the Leased Premises upon the expiration or termination of this Lease, such holding over shall constitute, and be construed as, a tenancy at will at a daily rental equal to one-thirtieth (1/30<sup>th</sup>) of an amount equal to, in addition to Additional Rent, one and one-half (1 1/2) times the Base Rent being paid by Tenant immediately prior to the expiration or termination of the Lease, and all other terms and provisions of this Lease shall apply during such holdover period (with

the exclusion of any expansion or renewal options). During such holdover period, Tenant agrees to vacate and deliver the Leased Premises to Landlord within ten (10) days of Tenant's receipt of notice from Landlord to vacate. Landlord may give such notice pursuant to the notice provisions of Section 14.07 herein or by facsimile transmission. Tenant agrees to pay the rental payable during the holdover period to Landlord on demand. No holding over by Tenant, whether with or without the consent of Landlord and notwithstanding receipt by Tenant of an invoice from Landlord for holdover rent, will operate to extend the Term. Additionally, Tenant shall pay to Landlord all damages sustained by Landlord as a result of such holding over by Tenant.

#### **ARTICLE 3.00 OCCUPANCY AND USE**

**3.01 Use.** The Leased Premises shall be used and occupied only for the purpose set forth in Section 1.06 and for no other purpose without the consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. Tenant shall occupy the Leased Premises, conduct its business and control its agents, employees, invitees and visitors in such a manner as is lawful, reputable, will not create a nuisance, interfere with Building and/or Project operations, or affect the structural integrity or design capabilities of the Building. Tenant shall not conduct any auction, liquidation or going out of business sale. Outside storage including storage of trucks and other vehicles is prohibited unless approved by Landlord. Tenant shall neither permit any waste on the Leased Premises nor allow the Leased Premises to be used in any way which would, in the opinion of Landlord, be extra hazardous on account of fire or which would in any way increase or render void the fire insurance on the Building. If at any time during the Term the State Board of Insurance or other insurance authority disallows any of Landlord's sprinkler credits or imposes an additional penalty or surcharge in Landlord's insurance premiums because of Tenant's original or subsequent placement or use of storage racks or bins, method of storage or nature of Tenant's inventory or any other act of Tenant, Tenant agrees to pay as additional rent the increase in Landlord's insurance premiums directly attributable to the acts of Tenant. Notwithstanding anything set forth in this Section 3.01, in no way does Landlord warrant or represent, either expressly or impliedly, that Tenant's use of the Leased Premises is in accordance with applicable codes or ordinances of the municipality within which the Building is located.

**3.02 Signs.** No sign (which shall include balloons, flags, pennants, banners, etc.) of any type or description visible from outside the Leased Premises may be erected, placed or painted on or about the Leased Premises or Building by Tenant, except those signs submitted to Landlord in writing and approved by Landlord in writing (such approval not to be unreasonably withheld, conditioned or delayed), and which signs are in conformance with (i) Landlord's sign criteria established for the Project and (ii) all Legal Requirements. Such permitted signs shall be installed at Tenant's sole cost and expense by a contractor reasonably approved by Landlord and must be removed by Tenant in accordance with the conditions allowing their erection upon expiration or termination of the Lease. Any damage from such removal shall be repaired at Tenant's sole cost and expense.

**3.03 Compliance with Laws, Rules and Regulations.** Tenant, at Tenant's sole cost and expense, shall comply with all laws, ordinances, orders, rules and regulations now in effect or enacted subsequent to the date hereof ("Legal Requirements") of state, federal, municipal or other agencies or bodies having jurisdiction over Tenant or the use, condition and occupancy of the Leased Premises. Tenant shall comply with the rules and regulations of the Building and Project adopted by Landlord which are set forth on Schedule I attached to this Lease ("Rules and Regulations"). Landlord is entitled, at all times, to change and amend the Rules and Regulations in any reasonable manner as Landlord deems advisable for the safety, care, cleanliness, preservation of good order and operation or use of the Leased Premises, Building or Project. All such changes and amendments to the Rules and Regulations must be in writing and sent to Tenant at the Leased Premises and must thereafter be carried out and observed by Tenant.

Landlord, as its sole cost and expense, shall comply with all Legal Requirements of state, federal, municipal or other agencies or bodies having jurisdiction over Landlord with respect to operation of the Project. Landlord represents and warrants that on the Commencement Date, the Leased Premises will be in compliance with applicable Legal Requirements.

**3.04 Warranty of Possession.** Landlord warrants that it has the right and authority to execute this Lease, and Tenant, upon compliance with the terms, conditions, covenants and agreements contained in this Lease, will be entitled to possession of the Leased Premises during the Term as well as any extension or renewal thereof. Tenant agrees that Landlord is not responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Leased Premises.

**3.05 Inspection.** Landlord or its authorized agents may, at any and all reasonable times upon twenty four (24) hour prior notice to Tenant, except in the event of an emergency, when notice is not required, enter the Leased Premises to inspect the same, conduct tests, environmental audits or other procedures to determine Tenant's compliance with the terms hereof; to supply any other service to be provided by Landlord; to show the Leased Premises to prospective purchasers, tenants or mortgagees; to alter, improve or repair the Leased Premises or any other portion of the Building or for any other purpose Landlord deems necessary. Tenant shall not change Landlord's lock system or in any other manner prohibit Landlord from entering the Leased Premises. Landlord is entitled to use any and all means which Landlord may deem proper to open any door in an emergency without liability therefor. During the final one hundred eighty (180) days of the Term, Landlord or its authorized agents have the right to erect or maintain on or about the Leased Premises or the Building customary signs advertising the Leased Premises for lease.

**3.06 Hazardous Waste.** The term "Hazardous Substances," as used in this Lease means pollutants, contaminants, toxic or hazardous wastes, or any other substances, the presence or use of which is regulated, restricted or prohibited by any "Environmental Law," which term means any federal, state or local law, ordinance or other statute of a governmental or quasi-governmental authority relating to pollution or protection of the environment. Tenant hereby agrees that (i) no activity will be conducted on the Leased Premises that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of Tenant's business activities and of which Landlord has been notified in writing (the "Permitted Activities"), provided said Permitted Activities are conducted in accordance with all Environmental Laws; Tenant shall obtain all required permits and pay all fees and provide any testing required by any governmental agency; (ii) the Leased Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Tenant's business and of which Landlord has been notified in writing (the "Permitted Materials"), provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws; Tenant shall obtain any required permits and pay any fees and provide any testing required by any governmental agency; (iii) no portion of the Leased Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground or above ground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute a public or private nuisance; (vi) Tenant will not permit any Hazardous Substances to be brought onto the Leased Premises, except for the Permitted Materials, and if so brought or found located thereon, the same must be immediately removed, with proper disposal, and all required cleanup procedures must be diligently undertaken pursuant to all Environmental Laws.

Landlord or Landlord's representative have the right but not the obligation to enter the Leased Premises in accordance with Section 3.05 for the purpose of inspection to ensure compliance with all Environmental Laws. Should Landlord determine, in Landlord's commercially reasonable opinion, that any Hazardous Substances, including Permitted Materials, are being improperly stored, used, or disposed of, or any Hazardous Activities are being improperly conducted, then Tenant shall immediately take such corrective action as required by Landlord. Should Tenant fail to take such corrective action within ten (10) days, or such shorter period as may be necessary to avoid or prevent damage to the Leased Premises, Landlord is entitled to perform such work and Tenant shall promptly reimburse Landlord for any and all commercially reasonable costs associated with said work. If at any time during or after the Term, the Leased Premises are found to be so contaminated or subject to said conditions, due to the existence of Hazardous Substances within the Leased Premises, Tenant shall diligently institute proper and thorough cleanup procedures at Tenant's sole cost. Before taking any action to comply with Environmental Laws or to clean up Hazardous Substances contaminating the Leased Premises, Tenant shall submit to Landlord a plan of action, including all plans and documents required by any Environmental Law to be submitted to a governmental authority (collectively a "plan of action"). Such plan of action must be implemented by a licensed environmental contractor. Before Tenant begins the actions necessary to comply with Environmental Laws or to clean up contamination from Hazardous Substances, Landlord must (1) approve the nature, scope and timing of the plan of action, and (2) approve any and all covenants and agreements to affect the plan of action.

Tenant represents and warrants to its actual knowledge that it has not been previously cited for any environmental violations by any applicable governmental agency.

**3.07 Parking and Road Use.** Tenant is granted the license and right to use, for the benefit of Tenant, its employees, customers, invitees and licensees, 1) the parking areas adjacent to the Building of which the Leased Premises are a part on an unassigned, unreserved and non-exclusive basis as available on a first come, first serve basis, and 2) the roadways within the Project, in each case subject to reasonable regulation by Landlord. Landlord reserves the right in its sole discretion to designate specific areas within

the parking areas for the exclusive use of Tenant, its visitors and invitees to the Building. In no event shall Tenant use more parking spaces than the minimum number of parking spaces required by all Legal Requirements for office/warehouse projects in the municipality in which the Project is located. No parking is permitted on any common drive areas by Tenant or any of Tenant's employees, customers, invitees or licensees. No driving or parking of any vehicles on non-paved areas adjoining the Building or within the Project is permitted. **LANDLORD WILL HAVE NO LIABILITY TO TENANT, ITS EMPLOYEES, AGENTS OR INVITEES FOR ANY CLAIMS OR LIABILITIES ARISING FROM SUCH PARTIES' USE OF THE PARKING AREAS AND TENANT WILL INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ALL SUCH CLAIMS AND LIABILITIES UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.**

**3.08 Permits.** Tenant shall, at its sole cost, be responsible for all permits with respect to the operation of its business and use and occupancy of the Leased Premises and will provide copies of such permits from time to time upon the written request of Landlord.

#### **ARTICLE 4.00 UTILITIES AND SERVICE**

**4.01 Building Services.** Landlord shall provide water, sewer, electricity and gas service connections to the Leased Premises. Tenant shall arrange for connection to such services and pay directly to the appropriate supplier all cost of utility services to the Leased Premises, including, but not limited to, security deposits, initial connection charges, taxes, penalties, surcharges or the like, all charges for gas, electricity, telephone, water, sprinkler monitoring devices, sanitary and storm sewer service, and security systems. If any services are jointly metered with other premises or property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such services and Tenant shall pay such share to Landlord within ten (10) days of receipt of any invoice thereof. Landlord may cause, at Tenant's expense, any utility services which are jointly metered to be separately metered. Tenant shall pay all costs caused by Tenant introducing excessive pollutants or solids other than ordinary human waste into the sanitary sewer system, including permits, fees and charges levied by any governmental subdivision for any such pollutants or solids. Tenant shall be responsible for the installation and maintenance of any dilution tanks, holding tanks, settling tanks, sewer sampling devices, sand traps, grease traps or similar devices as may be required by any governmental subdivision for Tenant's use of the sanitary sewer system. If the Leased Premises are in a multi-occupancy Building, Tenant shall pay all surcharges levied due to Tenant's use of sanitary sewer or waste removal services insofar as such surcharges affect Landlord or other tenants in the Building. Except as set forth herein, Landlord shall not be required to pay for any utility services, supplies or upkeep in connection with the Leased Premises. Utility services for the Common Areas shall be part of Operating Expenses.

Tenant agrees that Landlord shall not be liable to Tenant in any respect for damages to either person, property or business on account of any interruption or failure of utility services unless resulting from the gross negligence or willful misconduct of Landlord. No such interruption or failure may be construed as an eviction of Tenant or entitle Tenant to (i) any abatement of rent, (ii) terminate the Lease, or (iii) be relieved from fulfilling any covenant or agreement contained herein, provided, if any interruption or failure of utilities is the result of the gross negligence or willful misconduct of Landlord and such condition continues in excess of five (5) business days from the date Tenant notifies Landlord, Base Rent shall abate until the affected utilities are restored to the Leased Premises. Should any malfunction of the improvements or facilities to the Leased Premises or Building (which by definition do not include any improvements or facilities of Tenant above Building standard improvements) occur for any reason, Landlord shall use reasonable diligence to see that such malfunction is corrected promptly, but Tenant will not be entitled to any claim for rebate or abatement of rent or damages (except as set forth above) on account of such malfunction or of any interruptions in service occasioned thereby or resulting therefrom.

**4.02 Telecommunications.** Tenant, at its sole cost, may order and use telephone and other wired telecommunications services in accordance with rules and regulations adopted by Landlord from time to time, but Tenant must obtain Landlord's prior written consent to Tenant's use of services of a telephone or telecommunications service provider who is not then providing service to the Building such consent not to be unreasonably withheld, conditioned or delayed. Unless Landlord otherwise requests or consents in writing, Tenant's telecommunications equipment must be located in the Leased Premises. Landlord has no obligation to maintain Tenant's telecommunications equipment, wiring, or other infrastructure, and if any such service is interrupted, curtailed, or discontinued, Landlord will have no obligation or liability to Tenant, unless such interruption, curtailment or discontinuance results from the gross negligence or willful misconduct of Landlord.

(a) Upon expiration or termination of this Lease, Tenant, at its sole cost, will remove all telecommunications equipment and other facilities for telecommunications transmittal (except wiring) installed in the Leased Premises or in the Building for Tenant's use.

(b) Tenant will not use any wireless communications equipment (other than cellular telephones and Tenant's wireless network), antennae, or satellite receiver dishes within the Leased Premises nor within the Building or Project without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

(c) If Tenant's telecommunications service, transmitters, or receivers unreasonably interfere with Landlord's or another occupant's telecommunications services or equipment, Tenant will promptly eliminate any such interference or, if Tenant cannot eliminate it, stop using the equipment or service causing such interference. Tenant assumes liability for all claims and liabilities related to such interference.

**4.03 Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Project, Landlord is not providing any security services with respect to the Leased Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Leased Premises or any other breach of security with respect to the Leased Premises.

## ARTICLE 5.00 REPAIRS AND MAINTENANCE

**5.01 Existing Conditions.** Tenant accepts the Leased Premises as of the date hereof, subject to all recorded matters, laws, ordinances, and governmental rules, regulations and orders, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any warranty or representation of any kind, either express or implied as to the condition of the Leased Premises or the suitability of the Leased Premises for Tenant's intended use. The taking of the possession of the Leased Premises by Tenant will be conclusive evidence that Tenant accepts the Leased Premises, that the Leased Premises have been completed in accordance with Section 6.01 and were in good and satisfactory condition at the time such possession was so taken, subject to latent defects and punch-list items that do not interfere with the operation of Tenant's business within the Leased Premises. Prior to taking occupancy of the Leased Premises, Tenant shall sign a copy of the space plan of the Leased Premises acknowledging its condition on the date thereof (unless Landlord waives such requirement) and execute Landlord's Standard Tenant Acceptance of Premises form accepting such condition.

**5.02 Landlord Repairs And Maintenance.** Landlord is not required to maintain or make any repairs or replacements of any kind or character to the Leased Premises or the Building during the Term except as are set forth in this Section 5.02. Landlord shall maintain in good repair and condition, except for reasonable wear and tear, only the roof, foundation, surfaces and structural soundness of exterior walls and the Common Areas. Landlord shall not be responsible for windows, window glass, plate glass, doors, store fronts, uninsured losses and damages caused by Tenant or any third party, provided, Landlord shall be responsible for any damage to windows, window glass or plate glass resulting from improper or defective construction of the Building. Landlord's costs of maintaining the items set forth in this section are subject to the Additional Rent provisions in Section 2.03. Tenant is not entitled to any abatement or reduction of rent by reason of any maintenance, repairs or replacements made by Landlord under this Lease. Nothing contained herein entitles Tenant to perform any maintenance or make any repairs or replacements to the Leased Premises at Landlord's expense or to terminate the Lease based on the physical condition of the Leased Premises.

**5.03 Tenant Repairs And Maintenance.** Tenant shall, at its sole cost and expense, maintain, repair and replace all other parts of the Leased Premises in good repair and condition (reasonable wear and tear and damages caused by casualty or condemnation excepted), including, but not limited to windows, window glass, plate glass, doors, store fronts, floor covering, interior walls, partitions and finish work, interior side of structural walls, water closets, kitchens, interior plumbing, electrical systems, heating, ventilating and air-conditioning systems, down spouts, fire sprinkler system, dock bumpers, levelers, lights, truck and rail doors, pest control and extermination and trash pick-up and removal. Tenant shall repair and pay for any damage caused by any act or omission of Tenant or Tenant's agents, employees, invitees, licensees or visitors to the Leased Premises, the Building, or the Project. Repairs and replacements shall be done in a good and workmanlike manner and in accordance with all Legal Requirements. If Tenant fails to maintain, repair or replace promptly as required herein, Landlord may, at its option, perform on Tenant's behalf and charge the cost of such performance to Tenant as Additional Rent which is due and payable by

Tenant within ten (10) days from receipt of Landlord's invoice. Costs under this section are the total responsibility of Tenant and do not constitute Operating Expenses under Section 2.03.

Landlord agrees that Tenant may receive the benefit of all guaranties and warranties owned by Landlord on items for which it is responsible for repair and maintenance, provided it complies with all conditions established in any such guaranty or warranty.

**5.04 Request for Repairs.** All requests for repairs or maintenance that are the responsibility of Landlord pursuant to any provision of this Lease must be made in writing to Landlord at the address in Section 1.05 and delivered pursuant to Section 14.07. Notices sent by facsimile transmission are not considered proper notice for purposes hereof. After receipt of written notice, Landlord is entitled to a reasonable time within which to perform such repairs or maintenance.

**5.05 Tenant Damages.** Tenant shall not allow any damage to be committed to any portion of the Leased Premises or Building, and at the termination of this Lease Tenant shall deliver the Leased Premises to Landlord in as good condition as existed at the Commencement Date of this Lease, ordinary wear and tear excepted. Tenant shall notify Landlord in writing prior to vacating the Leased Premises and arrange to meet with Landlord for a joint inspection immediately prior to evacuation. The cost and expense of any repairs necessary to restore the condition of the Leased Premises shall be borne by Tenant. Should Landlord be required to expend any sums to ensure compliance with this Section 5.05, Tenant shall reimburse Landlord within ten (10) days of receipt of notice from Landlord.

**5.06 Maintenance Contract.** Tenant shall, at its sole cost and expense, during the Term maintain a regularly scheduled preventative maintenance/service contract on an annual basis with a maintenance contractor for the servicing of all heating, ventilation and air conditioning systems and equipment within or servicing the Leased Premises. The maintenance contractor and contract must be approved by Landlord and must include all services suggested by the equipment manufacturer. A copy of the service contract shall be provided to Landlord within sixty (60) days following the Commencement Date. In the event the service contract is not provided, then Landlord shall have the right, but not the obligation to have the work done and the cost therefor shall be charged to Tenant as Additional Rent and shall become payable by Tenant with the payment of the rent next due hereunder.

#### **ARTICLE 6.00 ALTERATIONS AND IMPROVEMENTS**

**6.01 Landlord Improvements.** Landlord will complete the construction of the improvements to the Leased Premises, including installation of any covered carports as shown in the Plans (the "Landlord Improvements"), in accordance with the plans and specifications attached hereto as Exhibit "C", subject to approval by local regulatory authorities (the "Plans"). Any changes or modifications to the Plans must be made and accepted by written change order or agreement signed by Landlord and Tenant and will constitute an amendment to this Lease. Any Landlord Improvements made by Landlord are the property of Landlord and must be surrendered to Landlord upon the termination of this Lease without credit to Tenant. Upon completion of any Landlord Improvements, Landlord shall provide and Tenant shall acknowledge receipt and acceptance of "as-built plans" of all work done in accordance with this Section 6.01. Tenant acknowledges that the cost of any Landlord Improvements shall include the reasonable cost of preparation of the Plans and a construction management fee payable to Landlord of five percent (5%) of the total cost of construction of the Landlord Improvements.

**6.02 Tenant Improvements.** Tenant shall not make or allow to be made any alterations or physical additions in or to the Leased Premises ("Tenant Alterations") without complying with all Legal Requirements and without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Consent may be conditioned upon review and approval of plans and specifications and monitoring of construction by Landlord. Landlord's review of Tenant's plans and specifications and monitoring of construction shall be solely for Landlord's benefit and shall impose no duty or obligation on Landlord to confirm that the plans and specifications and/or construction comply with any Legal Requirements. Any Tenant Alterations shall be made or performed at Tenant's sole cost and expense by a contractor or contractors acceptable to Landlord and in a good, workmanlike and lien free manner. All Tenant Alterations are the property of Landlord and must be surrendered to Landlord upon the termination of this Lease without credit to Tenant; provided, however, Landlord, at its option, may require Tenant to remove any Tenant Alterations in order to restore the Leased Premises to the condition existing at the time Tenant took possession, all costs of removal to be borne by Tenant, provided notice of such requirement is delivered to Tenant at the time consent for the Tenant Alterations is given. This clause does not apply to moveable equipment or furniture owned by Tenant, which may be removed by Tenant at the

end of the Term if no Event of Default then exists and if such equipment and furniture are not then subject to any other rights, liens and interest of Landlord and such removal can be accomplished without material damage to the Leased Premises. Upon completion of any Tenant Alterations, Tenant shall provide Landlord with "as built plans" (on CADD form), copies of all construction contracts and proof of payment for all labor and materials (including lien waivers). To defer the cost to Landlord associated with Tenant Alterations and confirming that such improvements are in accordance with the terms of this Lease and comply with all Legal Requirements, Tenant shall reimburse Landlord upon demand, as Additional Rent, any sums expended by Landlord for third party examination of the architectural, mechanical, electrical and plumbing plans for any Tenant Alterations.

Tenant, at its own cost and expense and without Landlord's prior approval, may erect such shelves, bins, machinery and trade fixtures (collectively "Trade Fixtures") in the ordinary course of its business provided that such items do not alter the basic character of the Leased Premises, do not overload or damage the Leased Premises, may be removed without injury to the Leased Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Upon expiration or earlier termination of this Lease, Tenant shall remove its Trade Fixtures and shall repair any damage caused by such removal.

## ARTICLE 7.00 CASUALTY AND INSURANCE

**7.01 Substantial Destruction.** (a) If the Leased Premises or any part thereof are damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord. 1) If the Leased Premises are totally destroyed by fire or other casualty, 2) if the Leased Premises are damaged so that rebuilding cannot reasonably be completed within one hundred eighty (180) days after the date of written notification by Tenant to Landlord of the destruction, 3) if the Leased Premises are part of a Building which is substantially destroyed (even though the Leased Premises are not totally or substantially destroyed), 4) if the Leased Premises or Building is damaged by fire or other casualty and applicable law would prevent rebuilding to substantially the condition prior to such fire or casualty, 5) if any mortgagee requires the insurance proceeds payable as a result of such casualty to be applied to the payment of the mortgage debt, 6) the Leased Premises are materially damaged and less than two (2) years remain on the Term on the date of such casualty, or 7) the insurance proceeds are insufficient to reconstruct the Leased Premises or Building to substantially the same condition prior to such fire or casualty, Landlord may at its option terminate this Lease by providing Tenant written notice thereof within sixty (60) days of such casualty and abate Base Rent and Additional Rent for the unexpired portion of the Term effective as of the date of the written notification.

(b) If the Leased Premises or any part thereof are damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord. (1) If the Leased Premises are totally destroyed by fire or other casualty, (2) if the Leased Premises are damaged so that rebuilding cannot reasonably be completed within one hundred eighty (180) days after the date of written notification by Tenant to Landlord of the destruction, (3) if the Leased Premises are damaged by fire or other casualty and applicable law would prevent rebuilding to substantially the condition prior to such fire or casualty, (4) if the Leased Premises are materially damaged and less than two (2) years remain on the Term on the date of such casualty, and in any of the foregoing situations, the damage is not the result of any act or omission of Tenant, Tenant may at its option terminate this Lease by providing Landlord written notice thereof within thirty (30) days of such casualty and Base Rent and Additional Rent shall abate for the unexpired portion of the Term effective as of the date of the written notification.

**7.02 Partial Destruction.** If this Lease is not terminated under Section 7.01, Landlord shall proceed with reasonable diligence to rebuild or repair the Building and Landlord Improvements, if applicable, to substantially the same condition in which they existed prior to the damage, provided, Tenant agrees that Landlord has no obligation to repair or rebuild any Tenant Alterations or Tenant's furniture, fixtures or personal property. If the Leased Premises are to be rebuilt or repaired and are untenable in whole or in part following the damage, Landlord and Tenant agree to adjust the Base Rent and Additional Rent payable under this Lease during the period for which the Leased Premises are untenable to such an extent as may be fair and reasonable under the circumstances. Landlord and Tenant hereby waive the provisions of any law from time to time in effect during the Term relating to the effect upon leases of partial or total destruction of leased property and agree that their respective rights in the event of damage or destruction are those specifically set forth herein. In no event shall Landlord be required to spend more than the insurance proceeds received by Landlord.

**7.03 Property Insurance.** Landlord shall at all times during the Term of this Lease maintain a

Fire and Extended Coverage, Vandalism and Malicious Mischief policy of insurance with the premiums paid in advance, issued by and binding upon some solvent insurance company, insuring the Building and Landlord Improvements, if applicable, in an amount equal to the full replacement cost of the Building and Landlord Improvements, if applicable, as of the date of the loss (exclusive of excavation and foundation costs, costs of underground items and costs of parking lot paving and landscaping); provided, Landlord shall not be obligated in any way or manner to insure any Tenant Alterations or any personal property (including, but not limited to, any furniture, machinery, goods or supplies) of Tenant upon or within the Leased Premises, or any fixtures installed or paid for by Tenant upon or within the Leased Premises. Tenant shall have no right in or claim to the proceeds of any policy of insurance maintained by Landlord even if the cost of such insurance is borne by Tenant as set forth in Article 2.00. Notwithstanding the foregoing, in the event Landlord has a net worth in excess of \$50,000,000, it shall be entitled to self insure against all risk provided for in this paragraph in lieu of obtaining the insurance set forth herein.

**7.04 Waiver of Subrogation.** ANYTHING IN THIS LEASE TO THE CONTRARY NOT WITHSTANDING, LANDLORD AND TENANT HEREBY WAIVE AND RELEASE EACH OTHER OF AND FROM ANY AND ALL RIGHT OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION, AGAINST EACH OTHER, THEIR AGENTS, OFFICERS, EMPLOYEES OR ANY PARTY CLAIMING BY, THROUGH OR UNDER LANDLORD OR TENANT, FOR ANY LOSS OR DAMAGE THAT MAY OCCUR TO THE LEASED PREMISES, IMPROVEMENTS TO THE BUILDING OF WHICH THE LEASED PREMISES ARE A PART, OR PERSONAL PROPERTY WITHIN THE BUILDING, BY REASON OF FIRE, EXPLOSION, OR ANY OTHER OCCURRENCE, REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF LANDLORD OR TENANT AND THEIR AGENTS, OFFICERS AND EMPLOYEES WHICH LOSS OR DAMAGE IS (OR WOULD HAVE BEEN, HAD THE INSURANCE REQUIRED BY THIS LEASE BEEN MAINTAINED) COVERED BY INSURANCE. LANDLORD AND TENANT AGREE IMMEDIATELY TO GIVE THEIR RESPECTIVE INSURANCE COMPANIES WHICH HAVE ISSUED POLICIES OF INSURANCE COVERING ALL RISK OF DIRECT PHYSICAL LOSS, WRITTEN NOTICE OF THE TERMS OF THE MUTUAL WAIVERS CONTAINED IN THIS SECTION AND TO HAVE THE INSURANCE POLICIES PROPERLY ENDORSED, IF NECESSARY, TO PREVENT THE INVALIDATION OF THE INSURANCE COVERAGES BY REASON OF THE MUTUAL WAIVERS.

**7.05 Hold Harmless.** (a) TENANT AGREES THAT LANDLORD IS NOT, AND DURING THE TERM HEREOF WILL NOT BE, LIABLE TO TENANT OR TENANT'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, CLAIMING BY, THROUGH OR UNDER TENANT FOR AN INJURY TO PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE LEASED PREMISES OR FOR LOSS OF OR DAMAGE TO TENANT'S BUSINESS CAUSED BY ANY ACT OR OMISSION OF TENANT OR LANDLORD, THEIR RESPECTIVE AGENTS, SERVANTS OR EMPLOYEES, ANY TENANT IN THE BUILDING AND/OR PROJECT OF WHICH THE LEASED PREMISES ARE A PART, OR OF ANY OTHER PERSON ENTERING UPON THE LEASED PREMISES UNDER EXPRESS OR IMPLIED INVITATION BY TENANT, OR CAUSED BY THE IMPROVEMENTS LOCATED ON THE LEASED PREMISES BECOMING OUT OF REPAIR, THE FAILURE OR CESSATION OF ANY SERVICE PROVIDED BY LANDLORD (INCLUDING HEATING, VENTILATING AND AIR CONDITIONING SYSTEMS, SECURITY SERVICE AND DEVICES) UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD. TENANT AGREES TO INDEMNIFY AND HOLD HARMLESS LANDLORD OF AND FROM ANY LOSS, ATTORNEY'S FEES, EXPENSES OR CLAIMS ARISING OUT OF ANY SUCH DAMAGE OR INJURY.

(b) LANDLORD AGREES THAT TENANT IS NOT, AND DURING THE TERM HEREOF WILL NOT BE, LIABLE TO LANDLORD OR LANDLORD'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, CLAIMING BY, THROUGH OR UNDER LANDLORD FOR AN INJURY TO PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE PROJECT (EXCLUDING THE LEASED PREMISES) OR FOR LOSS OF OR DAMAGE TO LANDLORD'S BUSINESS CAUSED BY ANY ACT OR OMISSION OF LANDLORD OR TENANT, THEIR RESPECTIVE AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PROJECT (EXCLUDING THE LEASED PREMISES) BY EXPRESS OR IMPLIED INVITATION OF LANDLORD, OR CAUSED BY THE IMPROVEMENTS LOCATED ON THE PROJECT (EXCLUDING THE LEASED PREMISES) BECOMING OUT OF REPAIR UNLESS CAUSED

**BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR TENANT. LANDLORD AGREES TO INDEMNIFY AND HOLD HARMLESS TENANT OF AND FROM ANY LOSS, ATTORNEY'S FEES, EXPENSES OR CLAIMS ARISING OUT OF ANY SUCH DAMAGE OR INJURY.**

**7.06 Tenant's Insurance.**

A. At all times commencing on and after the earlier of the Commencement Date and the date Tenant or its agents, employees or contractors enters the Leased Premises for any purpose, Tenant shall carry and maintain, at its sole cost and expense:

1. Commercial General Liability Insurance applicable to the Leased Premises, its appurtenances and Tenant's actions within the Building and Common Areas, providing, on an occurrence basis, a minimum combined single limit of Two Million Dollars (\$2,000,000.00), with a contractual liability endorsement covering Tenant's indemnity obligations under this Lease;

2. All Risks of Physical Loss Insurance written at full replacement cost value and with a replacement cost endorsement covering all of Tenant's personal property and Tenant Alterations in the Leased Premises; and

3. Workers' Compensation Insurance as required by the state in which the Leased Premises is located and in amounts as may be required by applicable statute.

B. Before any repairs, alterations, additions, improvements, or construction are undertaken by or on behalf of Tenant, Tenant shall carry and maintain, at its expense, or Tenant shall require any contractor performing work on the Leased Premises to carry and maintain, at no expense to Landlord, in addition to Workers' Compensation Insurance, All Risk Builder's Risk Insurance in the amount of the full replacement cost of any alterations, additions or improvements and Commercial General Liability Insurance (including, without limitation, Contractor's Liability coverage, Contractual Liability coverage and Completed Operations coverage,) written on an occurrence basis with a minimum combined single limit of Two Million Dollars (\$2,000,000.00) and adding "the named Landlord hereunder (or any successor thereto), and its respective members, principals, beneficiaries, partners, officers, directors, employees, agents and any Mortgagee(s)", and other designees of Landlord as the interest of such designees appear, as additional insureds (collectively referred to as the "Additional Insureds").

C. Any company writing any insurance which Tenant is required to maintain or cause to be maintained pursuant to the terms of this Lease (all such insurance as well as any other insurance pertaining to the Leased Premises or the operation of Tenant's business therein being referred to as "Tenant's Insurance"), as well as the form of such insurance, are at all times subject to Landlord's reasonable approval, and each such insurance company must have an A.M. Best rating of "A-" or better and be licensed and qualified to do business in the state in which the Leased Premises are located. All policies evidencing Tenant's Insurance (except for Workers' Compensation Insurance) must specify Tenant as named insured and the Additional Insureds as additional insureds. Provided that the coverage afforded Landlord and any designees of Landlord is not reduced or otherwise adversely affected, all of Tenant's Insurance may be carried under a blanket policy covering the Leased Premises and any other of Tenant's locations. All policies of Tenant's Insurance must contain endorsements requiring that the insurer(s) give Landlord and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination or lapse of said insurance. Tenant shall be solely responsible for payment of premiums for all of Tenant's Insurance. Tenant shall deliver to Landlord at least fifteen (15) days prior to the time Tenant's Insurance is first required to be carried by Tenant, and upon renewals at least fifteen (15) days prior to the expiration of any such insurance coverage, certificates evidencing all policies procured by Tenant in compliance with its obligations under this Lease. The limits of Tenant's Insurance do not in any manner limit Tenant's liability under this Lease.

D. Tenant shall not do or fail to do anything in, upon or about the Leased Premises which will (1) violate the terms of any of Landlord's insurance policies; (2) prevent Landlord from obtaining policies of insurance acceptable to Landlord or any Mortgagees; or (3) result in an increase in the rate of any insurance on the Leased Premises, the Building, any other property of Landlord or of others within the Building. In the event of the occurrence of any of the events set forth in this Section, Tenant shall pay Landlord upon demand, as Additional Rent, the cost of the amount of any increase in any such insurance

premium, provided that the acceptance by Landlord of such payment may not be construed to be a waiver of any rights by Landlord in connection with a default by Tenant under the Lease. If Tenant fails to obtain the insurance coverage required by this Lease, Landlord may, at its option, obtain such insurance for Tenant, and Tenant shall pay, as Additional Rent, the cost of all premiums thereon and all of Landlord's costs associated therewith.

#### ARTICLE 8.00 CONDEMNATION

**8.01 Substantial Taking.** (a) If all or a substantial portion of the Leased Premises or a substantial portion of the Building (even though the Leased Premises are not taken) are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Leased Premises or the Building for the purpose for which it is then being used, then Landlord may, but is not required to, terminate this Lease and abate Base Rent and Additional Rent during the unexpired portion of this Lease effective on the date title or physical possession is taken by the condemning authority, whichever occurs first.

(b) If all or a substantial portion of the Leased Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which it is then being used, then Tenant may, but is not required to, terminate this Lease and Base Rent and Additional Rent shall abate during the unexpired portion of this Lease effective on the date title or physical possession is taken by the condemning authority, whichever occurs first.

**8.02 Partial Taking.** If a portion of the Leased Premises or a portion of the Building are taken as set forth in Section 8.01 above and this Lease is not terminated as provided above, Landlord shall, at Landlord's sole risk and expense, restore and reconstruct the Leased Premises and Landlord Improvements, if applicable, to the extent necessary to make it reasonably tenantable, provided, if the damages received by Landlord are insufficient to cover the costs of restoration, Landlord may terminate this Lease. Landlord shall have no obligation to restore any Tenant Alterations. The Base Rent and Additional Rent payable under this Lease during the unexpired portion of the Term will be adjusted to such an extent as is fair and reasonable under the circumstances.

**8.03** In the event of any taking as set forth above, Tenant may seek a separate award for any loss of improvements made or paid for by Tenant, its personal property, and its moving expenses (so long as no such claim diminishes Landlord's claim or award), but all other claims of any nature shall belong to Landlord. In the event Tenant does not receive such a separate award, Landlord shall be entitled to receive any and all sums awarded for the taking.

**8.04** Notwithstanding anything herein to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Building and/or Project requires that the condemnation proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is imposed.

#### ARTICLE 9.00 ASSIGNMENT OR SUBLEASE

**9.01 Landlord Assignment.** Landlord is entitled to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease and in the Leased Premises. Any such sale, transfer or assignment shall, upon delivery to Tenant of a written assumption by the transferee of Landlord's obligations hereunder, release Landlord from all liabilities under this Lease arising after the date of such sale, assignment or transfer, and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligation.

**9.02 Tenant Assignment.** Tenant shall not assign, in whole or in part, this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise (including without limitation, if Tenant's voting securities are not traded on any national securities exchange, by transfer of more than a fifty percent (50%) interest in Tenant in a single transaction or in a series of transactions, which transfer will be deemed an assignment) or mortgage or pledge the same or sublet the Leased Premises, in whole or in part, without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed. In no event will any such assignment or sublease ever release Tenant or any guarantor from any

obligation or liability hereunder.

**9.03 Conditions of Assignment.** If Tenant desires to assign or sublet all or any part of the Leased Premises it must so notify Landlord at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Tenant shall provide Landlord with a copy of the proposed assignment or sublease and such information as Landlord might request concerning the proposed subtenant or assignee to allow Landlord to make informed judgments as to the financial condition, reputation, operations and general desirability of the proposed subtenant or assignee. Within fifteen (15) days after Landlord's receipt of Tenant's proposed assignment or sublease and all required information concerning the proposed subtenant or assignee, Landlord is entitled to exercise any of the following options: (1) consent to the proposed assignment or sublease, pursuant to a Consent Agreement on a form approved by Landlord in its reasonable discretion, and, if the rent due and payable by any assignee or subtenant under any such permitted assignment or sublease (or a combination of the rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the rent payable under this Lease for such space, Tenant shall pay to Landlord fifty percent (50%) of such excess rent and other excess consideration immediately upon receipt thereof by Tenant, after deducting therefrom all costs and expenses incurred by Tenant in connection with such assignment or sublease, or (2) refuse, in its reasonable discretion and judgment, to consent to the proposed assignment or sublease. If Landlord exercises option (1) above, and thereafter an Event of Default occurs, Landlord, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the assignee or subtenant all rents becoming due to Tenant by reason of the assignment or sublease, and Landlord will be entitled to a security interest in all property located on the Leased Premises to secure payment of such sums. Tenant agrees that any collection directly by Landlord from the assignee or subtenant may not be construed as, or constitute, a novation or a release of Tenant or any guarantor from the further performance of its obligations under this Lease. As a condition to a request for Landlord's review of any assignment or sublease, Tenant must pay Landlord all reasonable out-of-pocket legal fees and expenses incurred by Landlord in connection with the review by Landlord of Tenant's requested assignment or sublease together with any reasonable out-of-pocket legal fees and disbursements incurred in the preparation and/or review of any documentation required by the requested assignment or sublease within five (5) days of demand for payment thereof, provided Tenant's responsibilities for such amounts shall not exceed \$1,000.

**9.04 Subordination.** Tenant accepts this Lease subject and subordinate to any recorded mortgage or deed of trust lien or assignment of leases and rents presently existing or hereafter created upon the Building or Project (provided, however, that any such mortgagee may, at any time, subordinate such mortgage, deed of trust or other lien or assignment of leases and rents to this Lease) and to any renewals thereof. Tenant agrees that this clause is self-operative and no further instrument of subordination is required to effect such subordination. Tenant also agrees upon demand to execute additional instruments subordinating this Lease as Landlord may require. If the interests of Landlord under this Lease are transferred by reason of foreclosure or other proceedings for enforcement of any first mortgage or deed of trust lien or assignment of leases and rents on the Leased Premises, Tenant agrees to be bound to the transferee (sometimes called the "Purchaser"), under the terms, covenants and conditions of this Lease for the balance of the term remaining, including any extensions or renewals, with the same force and effect as if the Purchaser were Landlord under this Lease, and, if requested by the Purchaser, Tenant agrees to attorn to the Purchaser, including the first mortgagee under any such mortgage if it be the Purchaser, as its landlord, provided, in either event such Purchaser agrees to recognize the rights of Tenant hereunder as long as no Event of Default exists. Upon transfer of Landlord's interest to Purchaser, Purchaser shall not be 1) subject to any credit, demand, claim, counterclaim, offset or defense which theretofore accrued to Tenant against Landlord; 2) liable for any previous act or omission of Landlord, 3) unless consented to by Landlord's lender, bound by any previous modification of the Lease or prepayment of more than one month's Base Rent or Additional Rent in advance; 4) required to account for any Security Deposit unless actually delivered to Landlord's lender by Landlord; 5) bound by any obligation to make any payment or grant any credit except as specifically provided for in this Lease; and 6) responsible for any monies owing to Tenant by Landlord.

**9.05 Estoppel Certificates.** Tenant agrees to furnish, from time to time, within five (5) days after receipt of a request from Landlord, Landlord's mortgagee or any potential purchaser of the Building or Project, a statement certifying, if applicable, the following (noting any variances): Tenant is in possession of the Leased Premises; the Leased Premises are acceptable; the Lease is in full force and effect; the Lease is unmodified; Tenant claims no present charge, lien, or claim of offset against Base Rent; the Base Rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; to Tenant's knowledge, there is no existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord, Landlord's

mortgagee or any potential purchaser. Any notice and cure provisions set forth in any other part of this Lease do not apply to a default of this section 9.05.

#### ARTICLE 10.00 LIENS

**10.01 Landlord's Lien.** As security for payment of Base Rent, Additional Rent and damages, Tenant hereby grants to Landlord a lien upon all property of Tenant now or subsequently located upon the Leased Premises and Tenant agrees not remove such property from the Leased Premises except in the ordinary course of business, provided at the time of such removal no Event of Default exists. If an Event of Default exists, Landlord may enter upon the Leased Premises, by picking or changing locks if necessary, and take possession of all or any part of the personal property, and may sell all or any part of the personal property at a public or private sale, in one or successive sales, with or without notice, to the highest bidder for cash, on behalf of Tenant and convey all of Tenant's title and interest in the personal property sold. The proceeds of the sale of the personal property shall be applied by Landlord toward the reasonable costs and expenses of the sale, including attorney's fees, and then toward the payment of all sums then due by Tenant to Landlord under the terms of this Lease. Any excess remaining will be paid to Tenant or any other person entitled thereto by law.

**10.02 Uniform Commercial Code.** This Lease is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code of the state in which the Leased Premises are situated. Landlord, in addition to the rights prescribed in this Lease, is entitled to all of the rights, titles, liens and interests in and to Tenant's property, now or hereafter located upon the Leased Premises, which may be granted a secured party, as that term is defined, under the Uniform Commercial Code to secure to Landlord payment of all sums due and the full performance of all Tenant's covenants under this Lease. Tenant shall on request execute and deliver to Landlord a financing statement for the purpose of perfecting Landlord's security interest under this Lease or Landlord may file this Lease or a copy thereof as a financing statement. Unless otherwise provided by law and for the purpose of exercising any right pursuant to this section, Landlord and Tenant agree that any applicable requirement of reasonable notice is met if such notice is given by ten (10) days advance written notice, sent by certified mail, return receipt requested, to Landlord or Tenant at the addresses specified herein.

#### ARTICLE 11.00 DEFAULT AND REMEDIES

**11.01 Default by Tenant.** The following events constitute an Event of Default by Tenant under this Lease:

(a) Tenant fails to pay when due any installment of Base Rent, Taxes and Insurance, Operating Expenses or Additional Rent within ten (10) days of delivery of notice of such failure by Landlord;

(b) Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of Base Rent or Additional Rent and such failure continues in excess of thirty (30) days after delivery of notice of failure by Landlord, or such additional time as may be reasonably necessary provided Tenant commences and diligently prosecutes cure of such failure, but in no event in excess of ninety (90) days;

(c) Tenant or any guarantor of Tenant's obligations hereunder files, causes to be filed or has filed against it a petition in bankruptcy or is adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law, or admits that it cannot meet its financial obligations as they become due; or a receiver or trustee is appointed for all or substantially all of the assets of Tenant or such guarantor; or Tenant or any guarantor of Tenant's obligations hereunder makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors; or

(d) Tenant does or permits to be done any act which results in a lien (of any nature) being filed against the Leased Premises, the Building or Project, and does not cause such lien to be bonded around or discharged or recode within thirty (30) days following such filing.

**11.02 Remedies for Tenant's Default.** During the continuation of any Event of Default, Landlord is entitled to pursue any one or more of the remedies set forth herein without any notice or demand.

(1) Without declaring the Lease terminated, Landlord may enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any

other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, and relet the Leased Premises on behalf of Tenant and receive the rent directly by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Leased Premises as such deficiencies occur from time to time; further, Tenant agrees to reimburse Landlord for any expenditures made by it in order to relet the Leased Premises, including, but not limited to, leasing commissions, lease incentives, remodeling and repair costs and reasonable attorney's fees.

(2) Without declaring the Lease terminated, Landlord may enter upon the Leased Premises, by picking or changing locks if necessary, without being liable for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease, Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease including reasonable attorney's fees.

(3) Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to surrender the Leased Premises, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages. Tenant agrees to pay on demand the amount of all loss and damage which Landlord may suffer by reason of the termination of this Lease under this section, including without limitation, loss and damage due to the failure of Tenant to maintain and or repair the Leased Premises as required hereunder and/or due to the inability to relet the Leased Premises on terms satisfactory to Landlord or otherwise, and any expenditures made by Landlord in order to relet the Leased Premises, including, but not limited to, leasing commissions, lease incentives, and remodeling and repair costs. In addition, upon termination Landlord may collect from Tenant the value of all future rentals required to be paid under this Lease from the date Landlord terminates the Lease until the original Termination Date in accordance with applicable law. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by Landlord only by mailing or delivering written notice of such termination to Tenant, and no other act or omission of Landlord constitutes a termination of this Lease.

(4) If Landlord exercises its remedy to lock out Tenant in accordance with any provision of this Lease, Tenant agrees that no notice is required to be posted by Landlord on any door to the Leased Premises (or elsewhere) disclosing the reason for such action or any other information, and that Landlord is not obligated to provide a key to the changed lock to Tenant unless Tenant has first:

(I) brought current all payments due to Landlord under this Lease (unless Landlord has permanently repossessed the Leased Premises or terminated this Lease, in which event payment of all past due amounts will not obligated Landlord to provide a key);

(II) fully cured and remedied to Landlord's satisfaction all other Events of Default ; and

(III) provided Landlord with additional security deposit and assurances satisfactory to Landlord that Tenant intends to and is able to meet and comply with its future obligations under this Lease, both monetary and non-monetary.

Upon compliance with the foregoing, Landlord shall, upon written request by Tenant, at Landlord's convenience, upon receipt by Landlord of an amount necessary to reimburse itself for time and expense in providing such service, and upon Tenant's execution and delivery of such waivers and indemnifications as Landlord may require at Landlord's option either:

(i) escort Tenant or its specifically authorized employees or agents to the Leased Premises to retrieve personal belongings of Tenant's employees and property of Tenant that is not subject to a Security Interest provided in this Lease, or

(ii) obtain from Tenant a list of such property and arrange for such items to be removed from the Leased Premises and made available to Tenant at such place at such time as Landlord may designate, provided however, that if Landlord elects option (ii), then Tenant must pay in cash in advance to Landlord the estimated costs that Landlord may incur upon moving and storage charges theretofore incurred by Landlord with respect to such property.

**(5) THE PROVISIONS OF THIS ARTICLE ARE INTENDED TO OVERRIDE AND**

**SUPERSEDE ANY CONFLICTING PROVISIONS OF THE TEXAS PROPERTY CODE AND ANY AMENDMENTS OR SUCCESSOR STATUTES THERETO, AND OF ANY OTHER LAW, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW.**

(6) Notwithstanding any other remedy set forth in this Lease, if Landlord has provided any tenant improvement allowance, and Tenant fails to take possession of the Leased Premises on the Commencement Date or otherwise allows an Event of Default to exist at any time during the Term, any unamortized tenant improvement allowance, will be due and payable immediately.

(7) Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Leased Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(8) All of Landlord's rights and remedies set forth herein are cumulative and pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude Landlord from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any rent or other amount due to Landlord as described herein.

(9) If Tenant or any guarantor of Tenant's obligations hereunder is the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or similar proceeding, federal or state, voluntary or involuntary, under any present or future law or act, Landlord is entitled to the automatic and absolute lifting of any automatic stay as to the enforcement of its remedies under this Lease, including specifically the stay imposed by Section 362 of the United States Federal Bankruptcy Code, as amended. Tenant hereby consents to the immediate lifting of any such automatic stay, and may not contest any motion by Landlord to lift such stay. Tenant expressly acknowledges that the Leased Premises is not now and will never be necessary to any plan or reorganization of any type.

**(10) LANDLORD WILL NOT BE LIABLE FOR ANY CLAIMS OR LIABILITIES ARISING FROM LANDLORD'S EXERCISE OF ITS REMEDIES SET FORTH HEREIN UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, INCLUDING, WITHOUT LIMITATION, CLAIMS OR LIABILITIES ARISING FROM LANDLORD'S OWN NEGLIGENCE.**

**11.03 Landlord's Default.** Landlord shall not be in default of this Lease unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after receipt of written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary), with notice to Landlord's mortgagee as provided in Section 14.12. All obligations of Landlord hereunder shall be construed as covenants, not conditions and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Any liability of Landlord under this Lease shall be limited solely to its interest in the Building or Project, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its affiliates or any officer, director or employee of the foregoing.

**ARTICLE 12.00 INDEMNITIES**

**12.01 TENANT'S INDEMNITIES. TO THE FULL EXTENT PERMITTED BY LAW AND THIS LEASE, TENANT WILL INDEMNIFY AND DEFEND LANDLORD AGAINST ALL LIABILITIES AND CLAIMS AND THE COSTS AND EXPENSES THEREOF, ARISING OUT OF (I) ANY ACT OR OMISSION OF TENANT, INCLUDING WITHOUT LIMITATION TENANT'S CONDUCT OF BUSINESS IN THE LEASED PREMISES OR THE PROJECT, (E) ANY ALLEGED OR ACTUAL VIOLATION OR FAILURE TO COMPLY WITH ANY LEGAL REQUIREMENT, (III) ANY BREACH, VIOLATION OR NON-PERFORMANCE OF ANY OBLIGATION OF TENANT UNDER THIS LEASE, OR (IV) ANY MISREPRESENTATION CONNECTED WITH THE LEASE MADE BY TENANT OR ANY GUARANTOR.**

**12.02 LANDLORD'S INDEMNITIES. TO THE FULL EXTENT PERMITTED BY LAW AND THIS LEASE (AND EXCEPT TO THE EXTENT WAIVED AND RELEASED BY SECTION 7.04 AND 7.05), LANDLORD WILL INDEMNIFY AND DEFEND TENANT AGAINST ALL LIABILITIES AND CLAIMS AND THE COSTS AND EXPENSES THEREOF, ARISING OUT OF (I) ANY ACT OR OMISSION OF LANDLORD, INCLUDING WITHOUT**

**LIMITATION LANDLORD'S CONDUCT OF BUSINESS IN THE BUILDING OR THE PROJECT, (II) ANY ACTUAL VIOLATION OR FAILURE TO COMPLY WITH ANY LEGAL REQUIREMENT BY LANDLORD, (III) ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY OBLIGATION OF LANDLORD UNDER THIS LEASE, OR (IV) ANY MISREPRESENTATION CONNECTED WITH THE LEASE MADE BY LANDLORD.**

**ARTICLE 13.00  
RESERVED**

**ARTICLE 14.00 MISCELLANEOUS**

**14.01 Waiver.** Failure of Landlord to declare an Event of Default immediately upon its occurrence, or delay in taking any action (including enforcement of remedies) in connection with an Event of Default, does not constitute and shall not be deemed a waiver of the Event of Default, and Landlord is entitled to declare the Event of Default at any time and take such action as is lawful or authorized under this Lease.

No act or thing done by Landlord or its agents during the Term may be deemed an acceptance of an attempted surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises will be valid unless made in writing and signed by Landlord. No reentry or taking possession of the Premises by Landlord may be construed as an election on its part to terminate this Lease, unless a written notice of such intention, signed by Landlord, is given by Landlord to Tenant. Notwithstanding any such reletting or reentry or taking possession, Landlord may at any time thereafter elect to terminate this Lease for a continuing previous Event of Default. Tenant and Landlord agree that Landlord's acceptance of rent following an Event of Default hereunder will not constitute Landlord's waiver of such Event of Default. The failure of Landlord to enforce any of the Rules and Regulations against Tenant or any other tenant in the Building will not constitute a waiver of any such Rules and Regulations. No waiver of any provision of this Lease is effective unless such waiver is in writing and signed by Landlord.

**14.02 Act of God or Force Majeure.** An "act of God" or "force majeure" is defined for purposes of this Lease as strikes, lockouts, sitdowns, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of a party and which by the exercise of due diligence a party is unable, wholly or in part, to prevent or overcome. Neither Landlord or Tenant is required to perform any non-financial covenant or obligation in this Lease, or be liable in damages to the other party, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party.

**14.03 Attorney's Fees.** The prevailing party in any litigation between the parties with respect to the terms, covenants, agreements or conditions of this Lease, shall be entitled to recover as part of its judgment, reasonable attorney's fees and costs and expenses incurred therein.

**14.04 Successors.** This Lease applies to, is binding upon and inures to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns.

**14.05 Rent Tax.** If applicable in the jurisdiction where the Leased Premises are situated, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment must be paid concurrently with the payment of the Base Rent, Taxes and Insurance, Operating Expenses or other charge upon which the tax is based as set forth above.

**14.06 Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any section.

**14.07 Notice.** All rent and other payments required to be made by Tenant shall be paid to Landlord at the address set forth in Section 1.05 or at such other address as Landlord may specify from time to time by written notice. All payments required to be made by Landlord to Tenant are payable to Tenant at the address set forth in Section 1.05 or at any other address within the continental United States as Tenant may specify from time to time by written notice. For purposes hereof, any notice or document required or

permitted to be delivered by the terms of this Lease (other than delivery of rental payments) will be deemed to be delivered upon the earlier of actual receipt or (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth in Section 1.05. Rental payments are deemed received only upon actual receipt. Unless specifically authorized herein, any notice delivered via facsimile transmission will not satisfy a requirement to give notice under the terms of this Lease.

**14.08 Submission of Lease.** Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option or offer to lease. This Lease is not deemed effective until execution by and delivery to both Landlord and Tenant.

**14.09 Representations, Warranties and Covenants of Tenant.** (a) Tenant represents, warrants and covenants that it is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Tenant or any guarantor of Tenant's obligations under this Lease; that all reports, statements and other data furnished by Tenant to Landlord in connection with this Lease are true and correct in all material respects; that the execution and delivery of this Lease by Tenant does not contravene, result in a breach of, or constitute a default under any contract or agreement to which Tenant is a party or by which Tenant may be bound and does not violate or contravene any law, order, decree, rule or regulation to which Tenant is subject; and that there are no judicial or administrative actions, suits, or proceedings pending or threatened against or affecting Tenant or any guarantor of Tenant's obligations under this lease. If Tenant is a corporation, limited liability company or partnership, each of the persons executing this lease on behalf of Tenant represents and warrants that Tenant is duly organized and existing, is qualified to do business in the state in which the Leased Premises are located, has full right and authority to enter into this Lease, that the persons signing on behalf of Tenant are authorized to do so by appropriate corporate, company or partnership action and that the terms, conditions and covenants in this Lease are enforceable against Tenant. If Tenant is a corporation, limited liability company or partnership, Tenant, upon Landlord's request, will deliver evidence satisfactory to Landlord that the execution and delivery of this Lease has been duly authorized and properly executed.

(b) **Representations, Warranties and Covenants of Landlord.** Landlord represents, warrants and covenants that it is now in a solvent condition; that no bankruptcy or insolvency proceedings are pending or contemplated by or against Landlord that all reports, statements and other data furnished by Landlord to Tenant in connection with this Lease are true and correct in all material respects; that the execution and delivery of this Lease by Landlord does not contravene, result in a breach of; or constitute a default under any contract or agreement to which Landlord is a party or by which Landlord may be bound and does not violate or contravene any law, order, decree, rule or regulation to which Landlord is subject; and that there are no judicial or administrative actions, suits, or proceedings pending or threatened against or affecting Landlord. Landlord represents and warrants that it is duly organized and existing, is qualified to do business in the state in which the Leased Premises are located, has full right and authority to enter into this Lease, that the persons signing on behalf of Landlord are authorized to do so by appropriate corporate, company or partnership action and that the terms, conditions and covenants in this Lease are enforceable against Landlord.

**14.10 Severability.** If any provision of this Lease or the application thereof to any person or circumstance is rendered invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances remains unaffected thereby and continues to be enforced to the greatest extent permitted by law.

**14.11 Survival.** All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term, including, without limitation, all payment obligations and all obligations concerning the condition of the Leased Premises.

**14.12 Notice to Mortgagees.** Tenant shall serve written notice of any claimed default or breach by Landlord under this Lease upon any such mortgagee, and no notice to Landlord will be effective unless such notice is served upon said mortgagee; notwithstanding anything to the contrary contained herein, Tenant agrees to allow such mortgagee the same period following receipt of such notice to cure such default or breach as is afforded Landlord; provided, in the event it is necessary for said such mortgagee to foreclose on the property of which the Leased Premises are a part in order to cure such default, such mortgagee will be entitled to such additional time as is necessary to cure such default provided such default is cured within sixty (60) days of the last day for cure originally set forth in this Lease.

**14.13 No Recordation.** Neither Landlord nor Tenant shall record this Lease without the prior written consent of the other party.

**14.14 Counterparts.** This Lease may be executed in two or more counterparts, and it is not necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart constitutes an original, but all such counterparts taken together constitute but one and the same instrument.

**14.15 Governing Law/Venue.** THIS LEASE MUST BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE LAWS OF THE UNITED STATES OF AMERICA AS APPLICABLE TO TRANSACTIONS WITHIN THE STATE OF TEXAS. TENANT HEREBY SUBMITS TO THE JURISDICTION OF ANY COURT OF COMPETENT JURISDICTION SITTING IN DALLAS COUNTY, TEXAS.

**14.16 Broker.** Tenant represents and warrants that Tenant has dealt with no broker except Swearingen Realty Group ("Broker"), and that, insofar as Tenant knows, no other broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord agrees to indemnify and hold Tenant harmless from and against any liabilities or claims arising with respect to Broker or any other broker or similar parties whose claim arises by, through or on behalf of Landlord. Tenant agrees to indemnify and hold Landlord harmless from and against any liabilities or claims (and costs of defending against and investigating such claims) of any other broker or similar parties whose claim arises by, through or on behalf of Tenant.

**14.17 Publication.** Tenant hereby agrees that Landlord may, but is not required, at no cost to Tenant, to publicize and/or advertise the execution of this Lease and the related transaction. Tenant will not disclose the terms of this Lease to any other tenants in the Building or Project.

**14.18 DTPA Waiver.** TENANT WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER WITH RESPECT TO THIS LEASE AND THE PROPERTY LEASED UNDER THIS LEASE. TENANT IS VOLUNTARILY AGREEING TO THE WAIVER OF CONSUMER RIGHTS PROVISION AND CONSIDERS IT BINDING AND ENFORCEABLE; NO STATEMENT OR REPRESENTATION BY LANDLORD, OR ANY ATTORNEY OR OTHER REPRESENTATIVE ACTING ON ITS BEHALF, HAS INFLUENCED OR INDUCED TENANT TO AGREE TO THE WAIVER OF CONSUMER RIGHTS PROVISION.

**14.19 Construction of Lease.** Tenant declares that Tenant has read and understands all parts of this Lease, including all printed parts hereof. It is agreed that, in the construction and interpretation of the terms of this Lease, the rule of construction that a document is to be construed most strictly against the party who prepared the same will not be applied, it being agreed that both parties hereto have participated in the preparation of the final form of this Lease. Wherever in this Lease provision is made for liquidated damages, it is because the parties hereto acknowledge and agree that the determination of actual damages (of which such liquidated damages are in lieu) is speculative and difficult to determine; the parties agree that liquidated damages herein are not a penalty.

**14.20 Financial Statements.** Tenant acknowledges that it has provided Landlord with its financial statement(s) as a primary inducement to Landlord's agreement to lease the Leased Premises to Tenant, and that Landlord has relied on the accuracy of said financial statement(s) in entering into this Lease. Tenant represents and warrants that the information contained in said financial statement(s) is true, complete and correct in all material aspects, and agrees that the foregoing representations are conditions to all of Landlord's obligations under this Lease.

At the request of Landlord (only upon the sale or refinancing of the Building or Project, upon any extension or renewal hereof, or upon any Event of Default), Tenant shall, not later than thirty (30) days following such request, furnish to Landlord a financial statement of Tenant as of the end of the prior fiscal quarter and year accompanied by a statement of income and expense for such quarter and year then ended, together with a certificate of the chief financial officer, owner or partner of Tenant to the effect that the financial statements have been prepared in conformity with accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant as of and for the periods covered.

**14.21 Time of Essence.** With respect to all required acts of Landlord and Tenant, time is of the essence of this Lease.

**14.22 Joint and Several Liability.** If there is more than one Tenant, the obligations hereunder imposed upon Tenant are joint and several. If there is a guarantor(s) of Tenant's obligations hereunder, the obligations of Tenant are joint and several obligations of Tenant and each such guarantor, and Landlord need not first proceed against Tenant hereunder before proceeding against each such guarantor, nor will any such guarantor be released from its guarantee for any reason whatsoever, including, without limitation, any amendment of this Lease, any forbearance by Landlord or waiver of any of Landlord's rights, the failure to give Tenant or any such guarantor any notices, or the release of any party liable for the payment or performance of any of Tenant's obligations hereunder.

**14.23 Building Name and Address.** Landlord reserves the right at any time to change the name by which the Building is designated and its address, and Landlord has no obligation or liability whatsoever for costs or expenses incurred by Tenant as a result of such name change or address change of the Building.

**14.24 Taxes and Tenant's Property.** Tenant is solely liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property, furniture or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on such increase, Tenant shall pay Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

**14.25 Constructive Eviction.** Tenant is not entitled to claim a constructive eviction from the Leased Premises unless Tenant has first notified Landlord in writing of the condition giving rise thereto, and, if the complaints are justified, unless Landlord has failed to remedy such conditions within reasonable time after receipt of said notice.

**14.26 Exhibits.** All exhibits, attachments, riders and addenda referred to in this Lease are incorporated herein and made a part hereof for all intents and purposes.

#### ARTICLE 15.00 AMENDMENT AND LIMITATION OF WARRANTIES

**15.01 Entire Agreement.** IT IS EXPRESSLY AGREED BY TENANT, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR TO THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE.

**15.02 Amendment.** THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY LANDLORD AND TENANT AND BY ANY MORTGAGEE AS TO THE ITEMS DESCRIBED IN SECTION 14.12 .

**15.03 Limitation of Warranties.** LANDLORD AND TENANT EXPRESSLY AGREE THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

**15.04 Waiver of Jury Trial.** LANDLORD AND TENANT HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT NOW OR HEREAFTER EXISTS WITH REGARD TO THIS LEASE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LANDLORD AND TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD OR TENANT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

## ARTICLE 16.00 OTHER PROVISIONS

**16.01 Tenant Finish Allowance for Landlord Construction of Landlord Improvements.** Landlord shall provide Tenant an interior finish allowance (the "Tenant Finish Allowance") of \$ \$5.00 per square foot of the Leased Premises for the Landlord Improvements. Upon completion and approval by Landlord and Tenant of the Plans in accordance with Section 6.01 hereof, Landlord shall price the Plans at the best competitive prices available for projects of similar size, location and timing. In the event the cost of the Landlord Improvements called for by the Plans (including the reasonable cost associated with the preparation of the Plans and Landlord's construction management fee) exceeds \$5.00 per square foot of the Leased Premises, Landlord shall notify Tenant in writing, at which point Tenant shall deposit the excess amount with Landlord, who in turn shall deposit such amount into an interest bearing account with a national financial association, selected by Landlord. All interest earned on such account shall be for Tenant's benefit. Funds from this account shall be disbursed exclusively for the Landlord Improvements, such disbursement to be commenced once the cost of the Landlord Improvements as constructed have exceeded \$5.00 per square foot of the Leased Premises. Disbursements shall be made from time to time but at least every two (2) weeks, based on the progress of the work as certified by Landlord's architect, such certification to be in a form as may be reasonably required by Landlord. To the extent that all funds in excess of \$5.00 per square foot of the Leased Premises (including accrued interest thereon) are not used for the Landlord Improvements, they shall be returned to Tenant within thirty (30) days following completion of Landlord Improvements.

**16.02 Renewal Option.** Provided no Event of Default exists either on the date Tenant gives Landlord the renewal notice required below or at the end of the Term of this Lease, Tenant, but not any assignee or subtenant of Tenant, shall have the right to renew this Lease for one (1) additional term of sixty (60) months, upon the same terms and conditions contained in this Lease except: (i) the renewal term will contain no further renewal options unless expressly granted by Landlord in writing; and (ii) the Base Rent for the Leased Premises shall be equal to the Base Rent for the last month of the Term times 1.15 (i.e. 115%).

If Tenant desires to renew this Lease, Tenant will notify Landlord by written notice of its intention to renew not less than six (6) months prior to the expiration date of the Term, time being of the essence. Once given, Tenant's notice to renew shall be irrevocable. If Tenant fails to timely give said notice, Tenant shall be deemed to have waived Tenant's option to renew. Upon the valid exercise by Tenant of such option to renew, at the request of either party hereto and within thirty (30) days after such request, Tenant and Landlord shall enter into a written supplement to this Lease incorporating the terms, conditions and provisions applicable to the renewal Term determined in accordance with the provisions of this Section 16.02.

**16.03 Right of First Refusal ("Adjacent Space").** Provided no Event of Default exists on the date Landlord receives a third party offer, Landlord hereby grants to Tenant, but not any assignee or subtenant of Tenant, a right of first refusal during the initial Term (but not any renewal Term) to lease all or any part (but in no event less than 6,000 square feet) of the 39,305 square feet of vacant space in the Building immediately contiguous to the Leased Premises and as shown on Exhibit "A" as the "Adjacent Space" (the "Adjacent Space"). If Landlord receives an offer to lease any portion of the Adjacent Space from a third party, Landlord shall notify Tenant in writing of its intention to accept the Offer (the "Offer"). Tenant shall have five (5) business days from receipt of such notice to notify Landlord in writing, of Tenant's intent to exercise its right of first refusal with respect to the Adjacent Space which is the subject of the Offer. If the terms of the Offer include space in addition to the Adjacent Space, Tenant shall be required to lease all of such space if it desires to lease the Adjacent Space. If Tenant does not exercise its right of first refusal, then Landlord may lease such space to the third party, provided if the third party does not execute a lease or following execution of a lease vacates the space subject to the Right of First Refusal, Tenant's Right of First Refusal with respect thereto shall be reinstated.

If Tenant elects to exercise its Right of First Refusal to lease the Adjacent Space which is the subject of the Offer, the terms for the lease of such space shall be the same as the terms for the Leased Premises, with the following exceptions: (i) there shall be no abated Base Rent; and (ii) if Tenant's unencumbered cash and marketable securities are equal to two (2) times the sum of (a) the tenant finish allowance that Tenant will receive as set forth below, plus (b) the amount of commission Landlord will be obligated to pay for Tenant's expansion into the Adjacent Space and Tenant has positive net income for the six (6) month period immediately preceding Tenant's exercise, Tenant shall be entitled to a tenant finish

allowance as follows:

1. if the Right of First Refusal is exercised within the first twelve (12) months of the Term, Tenant shall receive a tenant finish allowance equal to \$10.00 psf of the Adjacent Space, the improvements to, and use of such allowance for the Adjacent Space to be in accordance with Sections 6.01 and 16.01; and

2. if the Right of First Refusal is exercised after the first twelve (12) months of the Term, Tenant shall have the following options: (aa) receive a tenant finish allowance equal to \$10.00 psf multiplied by a fraction, the numerator of which is the number of months remaining in the Term and the denominator of which is 72, or (bb) receive a tenant finish allowance equal to \$10.00 psf and extend the Term for the entire Leased Premises for a period of sixty (60) months, during which extended time Base Rent shall be equal to Base Rent for the seventy second (72<sup>nd</sup>) month of the Term. In either event, the improvements to, and use of the allowance for the Adjacent Space shall be in accordance with Sections 6.01 and 16.01.

Within thirty (30) days from the date of Tenant's election to exercise its right of first refusal, Tenant and Landlord will enter into a written supplement to this Lease to add the Adjacent Space to the Leased Premises and to modify Tenant's Pro Rata Share of Taxes and Insurance and Operating Expenses as set forth in Section 2.04 and 2.05 hereof, otherwise Tenant's right of first refusal shall terminate and Landlord may lease such space to any third party.

**16.04 Expansion Option.** Provided no Event of Default exists on the date of exercise of such option, Landlord hereby grants to Tenant, but not any assignee or subtenant of Tenant, an ongoing right to expand the Leased Premises during the initial Term (but not any renewal Term) to include all or any part (but in no event less than 6,000 square feet) of the 39,305 square feet of vacant space in the Building immediately contiguous to the Leased Premises and as shown on Exhibit "A" as the "Adjacent Space" (the "Expansion Space"). Tenant shall notify Landlord in writing of Tenant's intent to exercise its expansion option with respect to the portion of the Expansion Space specified therein.

If Tenant elects to exercise its expansion option to lease any such applicable portion of the Expansion Space, the terms for the lease of such space shall be the same as the terms for the Leased Premises, with the following exceptions: (i) there shall be no abated Base Rent, and (ii) if Tenant's unencumbered cash and marketable securities are equal to two (2) times the sum of (a) the tenant finish allowance that Tenant will receive as set forth below, plus (b) the amount of commission Landlord will be obligated to pay for Tenant's expansion into the Adjacent Space, and (iii) that Tenant has positive net income for the six (6) month period immediately preceding Tenant's exercise, Tenant shall be entitled to a tenant finish allowance as follows:

1. if the expansion option is exercised within the first twelve (12) months of the Term, Tenant shall receive a tenant finish allowance equal to \$10.00 psf of the applicable portion of the Expansion Space, the improvements to, and use of such allowance for, the applicable portion of the Expansion Space to be in accordance with Sections 6.01 and 16.01; and

2. if the expansion option is exercised after the first twelve (12) months of the Term, Tenant shall have the following options: (a) receive a tenant finish allowance equal to \$10.00 psf multiplied by a fraction, the numerator of which is the number of months remaining in the Term and the denominator of which is 72, or (bb) receive a tenant finish allowance equal to \$10.00 psf and extend the Term for the entire Leased Premises for a period of sixty (60) months during which extended time Base Rent shall be equal to the Base Rent for such seventy-second (72<sup>nd</sup>) month of the Term. In either event, the improvements to, and use of the allowance for the Expansion Space shall be in accordance with Sections 6.01 and 16.01.

Within thirty (30) days from the date of Tenant's election to exercise its expansion option, Tenant and Landlord will use good faith efforts to enter into a written supplement to this Lease to add the applicable portion of the Expansion Space to the Leased Premises and to modify Tenant's Pro Rata Share of Taxes and Insurance and Operating Expenses as set forth in Section 2.04 and 2.05 hereof.

**16.05 Existing Furniture.** Tenant may use the existing furniture listed on Exhibit D attached hereto (the "Furniture") during the Term at no additional cost. Tenant shall maintain the furniture in good condition and repair during the Term. Provided no Event of Default exists at the end of the Term, Landlord shall convey the Furniture to Tenant, without warranty.

Tenant shall be responsible for coordination of and all costs associated with relocating any of the

Furniture to allow contractors access to complete the Landlord Improvements. Tenant shall also be responsible for coordination of and all costs associated with setting up the Furniture after construction is completed.

**16.06 Generator, Uninterrupted Power Supply ("UPS").** Tenant acknowledges that there is a Generator and UPS system serving the Leased Premises and Adjacent Space (collectively the "Served Space") the Served Space is connected to such Generator and UPS system. Tenant shall have the nonexclusive right to the use of the Generator and UPS system, but acknowledges that other tenants leasing space within the Adjacent Space will also have access to use of the Generator and UPS system. Tenant shall, at its sole cost and expense during the Term, maintain a regularly scheduled preventative maintenance/service contract on the Generator and UPS system on an annual basis with a maintenance contractor acceptable to Landlord, such contract to include all services suggested by the equipment manufacturer. A copy of the service contract shall be provided to Landlord within sixty (60) days following the Commencement Date. In the event the service contract is not provided, then Landlord shall have the right, but not the obligation to have the work done and the cost therefor shall be charged to Tenant as Additional Rent and shall become payable by Tenant with the payment of the rent next due hereunder. In the event another tenant occupies space within the Adjacent Space, such tenant shall be responsible for reimbursing Tenant for its pro rata share of the costs paid by Tenant for maintaining the Generator and UPS system. Such pro rata share shall be determined by multiplying Tenant's costs by a fraction, the numerator of which is the number of square feet contained within such tenant's space and the denominator of which is the number of square feet contained in the Served Space. Tenant agrees to provide documentation to such tenant detailing its costs associated with such maintenance. Landlord agrees to include language in any lease for any of the Adjacent Space obligating such tenant for its pro rata share of the costs associated with Tenant's maintenance of the Generator and UPS system.

[Signature page follows]

ARTICLE 17.00 SIGNATURES / DATE OF EXECUTION

SIGNED this 9 day of April, 2004.

Landlord:

VANTAGE DEVELOPMENT #21, INC.

By: /s/ Fredrick L. Albrecht

Name: Fredrick L. Albrecht

Title: President

Tenant:

I-SECTOR CORPORATION

By: /s/ Mark T. Hilz

Name: Mark T. Hilz

Title: President

Tenant Federal Employer  
Identification Number:

76-0650041

- Schedule I - Rules and Regulations
- Exhibit A - Leased Premises
- Exhibit B - Land
- Exhibit C - Plans
- Exhibit D - Furniture

FIRST AMENDMENT TO STANDARD COMMERCIAL LEASE

THIS FIRST AMENDMENT TO STANDARD COMMERCIAL LEASE ("First Amendment") is entered into as of the 9th day of June, 2006 by and between Vantage Development #21, Inc. ("Landlord") and INX Inc., formerly known as I-Sector Corporation ("Tenant").

**RECITALS:**

1. Landlord and Tenant entered into that certain Standard Commercial Lease dated April 10, 2004 (the "Lease") for lease of approximately 24,081 square feet of space at 1955 Lakeway Drive, Suite 220, Lewisville, Texas 75057, as shown on Exhibit A of the Lease (the "Leased Premises") in the project known as Waters Ridge Tech Center I, Lewisville, Texas (the "Project").

2. Landlord and Tenant desire to amend the Lease by, among other things, increasing the size of the Leased Premises by 4,398 square feet for a total size of 28,479 square feet.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Lease and Guaranty are amended as follows:

1. The Leased Premises shall contain approximately 28,479 square feet and is identified on Exhibit "A" attached hereto as "24,081 S.F. Leased" ("Original Leased Premises") and "4,398 S.F. Expansion" ("Expansion Premises"). The foregoing shall be collectively referred to as the Leased Premises.

2. The Commencement Date for the Original Leased Premises was June 1, 2004. The Commencement Date for the Expansion Premises shall be the latter to occur of (a) August 1, 2006, or (b) the date of substantial completion of the Landlord Improvements to the Expansion Premises. If the date of substantial completion occurs prior to August 1, 2006, Tenant may occupy the Expansion Premises subject to the terms of the Lease, with the exception of payment of Base Rent and Additional Rent, which will not commence until August 1, 2006..

3. The Termination Date for the Lease (including the Original Leased Premises and Expansion Premises) shall be June 30, 2010.

4. Base Rent for the Original Leased Premises from the Commencement Date to the day prior to the Commencement Date for the Expansion Premises shall remain unchanged. Base Rent for the Leased Premises (including the Original Leased Premises and Expansion Premises) from the Commencement Date for the Expansion Premises to the Termination Date shall be as follows:

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- a. Commencement Date Expansion Premises — May 31, 2008: \$23,732 per month;
- b. June 1, 2008 — June 30, 2010: \$26,106 per month.

5. Upon the Commencement Date for the Expansion Premises, Tenant's Pro Rata Share of Taxes and Insurance, and Operating Expenses shall be increased to include the Expansion Premises.

6. Tenant acknowledges that all Landlord Improvements to be constructed to the Original Leased Premises have been completed in accordance with the Lease and are acceptable.

7. Landlord and Tenant acknowledge that all Landlord Improvements to the Expansion Premises shall be constructed by Landlord in accordance with the following:

- a. Landlord will complete the construction of the improvements to the Expansion Premises, (the "Landlord Improvements"), in accordance with plans and specifications agreed to by Landlord and Tenant, subject to approval by local regulatory authorities (the "Expansion Plans"), which Expansion Plans are made a part of this Lease by reference. Tenant shall provide Landlord information regarding its interior layout ("Interior Criteria") on or before June 5, 2006. Landlord shall prepare the Expansion Plans based on the Interior Criteria and deliver them to Tenant within ten (10) days thereafter. Tenant shall execute a copy of the Expansion Plans, setting forth the amount of any costs to be borne by Tenant, within seven (7) days of receipt of the Expansion Plans. In the event Tenant fails to timely deliver the Interior Criteria or execute the Expansion Plans within the seven (7) day period (a "Tenant Delay"), then promptly following substantial completion of the Landlord Improvements, Landlord shall notify Tenant, in writing, of the date upon which substantial completion of the Landlord Improvements would have occurred but for such Tenant Delay, and the first business day following such date shall thereafter be deemed to be the Commencement Date for the Expansion Premises for all purposes under the Lease. Tenant shall pay to Landlord, within five (5) calendar days of receipt of such written notice (which notice shall include a summary of the Tenant Delay), the per diem Base Rent and Additional Rent times the number of days between the Commencement Date that would have otherwise been established but for the Tenant Delay (as determined by Landlord's space planner), and the first business day following the date of substantial completion of the Landlord Improvements.

Any changes or modifications to the Expansion Plans must be made and accepted by written change order or agreement signed by Landlord and Tenant and will constitute an amendment to this Lease. Any Landlord Improvements made by Landlord are the property of Landlord and must be surrendered to Landlord upon the termination of this Lease without credit to Tenant. Upon completion of any Landlord Improvements, Landlord shall provide and Tenant shall acknowledge receipt and acceptance of "as-built plans" of all work done in accordance with this

Paragraph 7a. Tenant acknowledges that the cost of any Landlord Improvements shall include the reasonable cost of preparation of the Expansion Plans and a construction management fee payable to Landlord of five percent (5%) of the total cost of construction of the Landlord Improvements.

b. Landlord shall provide Tenant an interior finish allowance (the "Tenant Finish Allowance") of \$28,720 for the Landlord Improvements. Upon completion and approval by Landlord and Tenant of the Expansion Plans in accordance with Paragraph 7a above, Landlord shall competitively bid the Expansion Plans to three (3) contractors, one of which may be chosen by Tenant. Following receipt of the bids, Landlord will provide a copy of each bid to Tenant and the lowest bid that conforms to Landlord's bid package, shall be selected to construct the Landlord Improvements.

In the event the cost (as evidenced by the selected bid) of the Landlord Improvements called for by the Expansion Plans (including the reasonable cost associated with the preparation of the Expansion Plans and Landlord's construction management fee) exceeds \$28,720 Landlord shall notify Tenant in writing, at which point Tenant shall deposit the excess amount with Landlord, who in turn shall deposit such amount into an interest bearing account with a national financial association, selected by Landlord. All interest earned on such account shall be for Tenant's benefit. Funds from this account shall be disbursed exclusively for the Landlord Improvements, such disbursement to be commenced once the cost of the Landlord Improvements as constructed have exceeded \$28,720. Disbursements shall be made from time to time but at least every two (2) weeks, based on the progress of the work as certified by Landlord's architect, such certification to be in a form as may be reasonably required by Landlord. To the extent that all funds in excess of \$28,720 (including accrued interest thereon) are not used for the Landlord Improvements, they shall be returned to Tenant within thirty (30) days following completion of Landlord Improvements.

8. Tenant represents and warrants that Tenant has dealt with no broker except Swearingen Realty Group ("Broker"), and that, insofar as Tenant knows, no other broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord agrees to indemnify and hold Tenant harmless from and against any liabilities or claims arising with respect to Broker or any other broker or similar parties whose claim arises by, through or on behalf of Landlord. Tenant agrees to indemnify and hold Landlord harmless from and against any liabilities or claims (and costs of defending against and investigating such claims) of any other broker or similar parties whose claim arises by, through or on behalf of Tenant

9. Exhibit "A" to the Lease is hereby deleted in its entirety and replaced with Exhibit "A" attached hereto.

10. Except as set forth herein, the Lease shall remain unchanged and the parties ratify the terms thereof, as amended herein.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date and year first above written.

LANDLORD:

Vantage Development #21, Inc.

By: /s/ Frederick L. Albrecht  
Name: Frederick L. Albrecht  
Title: President

TENANT

INX Inc.

By /s/ Mark Hilz  
Name: Mark Hilz  
Title: Chief Operating Officer

SECOND AMENDMENT TO STANDARD COMMERCIAL LEASE

This Second Amendment to Standard Commercial Lease (the "Second Amendment") is entered into as of July 19, 2010 (the "Execution Date"), by and between JG Heritage Waters Ridge Ltd., a Texas limited partnership ("Landlord") and INX, Inc., formerly known as I-Sector Corporation, a Delaware corporation ("Tenant").

B A C K G R O U N D:

A. Vantage Development #21, Inc., a Texas corporation ("Original Landlord") and Tenant entered into a written Standard Commercial Lease (the "Lease") dated April 10, 2004, in which Original Landlord leased to Tenant and Tenant leased from Original Landlord approximately 24,081 square feet of area (the "Leased Premises") identified as Suite 220 of Waters Ridge Tech Center I (the "Project") located at 1955 Lakeway Drive, Lewisville, Texas 75057.

B. Original Landlord and Tenant amended the Lease pursuant to a First Amendment to Standard Commercial Lease (the "First Amendment") dated as of June 9, 2006, to, among other things, increase the size of the Leased Premises to approximately 28,479 square feet

C. Original Landlord sold a portion of the Project to Landlord, and in conjunction with that sale, Original Landlord assigned all of its interest in the Lease (as amended by the First Amendment) to Landlord.

D. Landlord and Tenant desire to amend the Lease again to, among other things, increase the size of the Leased Premises again, extend the term of the Lease, adjust the amount of Base Rent to be paid during such extended term, and make other amendments and changes to the Lease.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, Landlord and Tenant agree as follows:

1. **Leased Premises, Exhibit A and Exhibit B.** Section 1.02 of the Lease is amended to provide that the Leased Premises shall contain approximately 34,656 square feet and is identified on Exhibit "A" attached hereto as the "Original Leased Premises" (24,081 square feet) and the First Amendment Expansion Premises" (4,398 square feet) and the "Second Amendment Expansion Premises" (6,177 square feet). The Original Leased Premises, the First Amendment Expansion Premises and the Second Amendment Expansion Premises are collectively referred to as the "Leased Premises." Furthermore, Exhibit "B" is amended to delete the property commonly known as 1945 Lakepointe Drive which has been replatted as a separate legal Lot 1R-A2, Block B, Waters Ridge, Phase II Addition to the City of Lewisville, Texas and the remaining land in Exhibit B is now legally described as set forth in the attached Exhibit B.

2. **“Building” or “Project” and Pro Rata Share**. Section 2.03 of the Lease gives the Landlord the right to adjust Tenant’s Pro Rata Share as a result of any changes in the physical size of the Building or Project. The terms “Building” and “Project” are used interchangeably in Lease sections 1.02 and 2.03. As a result of the sale of a portion of the Project to a third party, the “Project” now consists of and is revised to mean a total of 199,665 square feet (consisting of 1825 Lakeway Drive, 1955 Lakeway Drive and 1965 Lakepointe Drive) and no longer contains 227,495 square feet as shown in Lease section 1.02 because it now excludes 1945 Lakepointe Drive. The Building is revised to mean Building 1 of Waters Ridge Tech Center I located at 1955 Lakeway Drive and it consists of 91,031 square feet. Therefore, Tenant’s current Pro Rata share for the Original Leased Premises is  $24,081/91,031 = 26.4536\%$ , and for the First Amendment Expansion Premises is  $4,398/91,031 = 4.8313\%$ . The Tenant’s Pro Rata share for the Second Amendment Expansion Premises is  $6,177/91,031 = 6.7856\%$ . Landlord retains the right in Lease section 2.03 to modify the Tenant’s Pro Rata Share based on changes in the size of the Leased Premises, Building, Common Areas of the Building or Project, as therein provided.

3. **Interim Extension Term and the Commencement Date of the Extended Term of the Leased Premises**. Section 1.03 of the Lease is amended first to provide that the Term for the Original Leased Premises and the First Amendment Expansion Premises shall be extended (the “Interim Extension Term”) to the Substantial Completion Date as defined in Exhibit E, subject to adjustment caused by any Tenant Delays as defined in Exhibit E, Section 9 (the “Substantial Completion Date”). The Leased Premises includes the Original Leased Premises, the First Amendment Expansion Premises and the Second Amendment Expansion Premises. Second, the Term for the Leased Premises is further extended commencing on the Substantial Completion Date (the “Commencement Date”) and continuing for a period of sixty (60) months if the Commencement Date is the first day of a calendar month (the “Extended Term”). If the Commencement Date is not the first day of a calendar month, the Extended Term of the Leased Premises shall be the balance of the partial month in which the Commencement Date occurs, plus an additional sixty (60) months. Landlord and Tenant agree to certify the Commencement Date of the Second Amendment Extended Term for the Leased Premises in writing within ten (10) days of occurrence using the memorandum attached hereto as Exhibit C.

4. **Base Rent**. Section 1.04 of the Lease is amended to provide that the monthly installments of Base Rent to be paid for the Original Leased Premises and the First Amendment Expansion Premises during the Interim Extension Term and the Extended Term of the Lease shall be as follows:

Original Leased Premises and First Amendment Expansion Premises:

<u>Lease Period</u>	<u>Base Rental Rate/SF/YR</u>	<u>Monthly Base Rent</u>
Execution Date to the day prior to the Commencement Date of the Extended Term	\$11.00/SF	\$26,105.75

Extended Term of the Leased Premises :

<u>Lease Period</u>	<u>Base Rental Rate/SF/YR</u>	<u>Monthly Base Rent</u>
First two months after the Commencement Date	Base Rent only is abated	\$-0-
Months three through thirty- six after the Commencement Date Plus any partial prorated month	\$11.00/SF	\$31,768.00
Months thirty-seven through sixty after the Commencement Date	\$12.00/SF	\$34,656.00

Only Base Rent is abated during the first two (2) months of the Extended Term. Tenant's obligation to pay Tenant's Building Pro Rata Share of Operating Expenses, Taxes and Insurance is NOT abated during the two (2) month Base Rent abatement period.

If the Commencement Date of the Extended Term of the Leased Premises occurs on a date other than the first day of a calendar month, 1) the monthly Base Rent shall be prorated for the first partial month on a per diem basis, and (2) the first escalation of monthly Base Rent as set forth in this Section above shall take effect on the first day of the month following the thirty-sixth full calendar month of the Extended Term.

As consideration for Tenant's performance of all obligations to be performed by Tenant under this Lease (as amended and extended), Landlord has conditionally abated Base Rent during the first two (2) months of the Extended Term. Should Tenant default in the performance of its obligations under this Lease and fail to cure said default within the time limit allowed by this Lease or by law, then the amount of rent conditionally excused herein as abated Base Rent (which amount is determined to be \$63,536.00) shall become immediately due and payable and Landlord shall be entitled to immediately institute legal action to collect said monies.

5. **Notices.** Section 1.05 of the Lease is amended to update the address of Landlord as follows:

Landlord's Address: JG Heritage Waters Ridge, Ltd  
c/o J.G. Management Company  
5743 Corsa Avenue, Suite 200  
Westlake Village, CA 91362  
Fax No. (818) 707-3949  
Attn: Greg Greenstein

6. **Operating Expenses.** Section 2.05 Operating Expenses, Paragraphs 1 and 2 are deleted entirely and replaced with the following language:

**"2.05 Operating Expenses.** Tenant agrees to pay without notice, demand, deduction, counterclaim, set-of or abatement of any kind, Tenant's Pro Rata Share of Landlord's operating expenses for the Building and/or Project as set forth in Section 2.06 ("Operating Expenses"). Landlord shall invoice Tenant monthly for Tenant's Pro Rata Share of the estimated Operating Expenses for each calendar year and may adjust such share each subsequent year based upon anticipated Operating Expenses. Once yearly, Landlord is entitled to adjust the estimated Operating Expenses to reflect current or anticipated Operating Expenses. Effective January 1, 2010 Tenant shall pay its Pro Rata share of Operating Expenses for the Original Leased Premises and the First Amendment Expansion Premises. However, calculation of increases in Tenant's Pro Rata share of Operating Expenses for the Original Leased Premises and the First Amendment Expansion Premises subsequent to the calendar year 2010 shall be capped at five percent (5%) annually on a compounded basis. For example, if the Operating Expenses for 2010 total \$75,000, then the caps for subsequent years shall be as follows: 2011=\$78,750; 2012=\$82,687.50; 2013=\$86,821.88; 2014=\$91,162.97 and 2015=\$95,721.12. Provided, however, the foregoing cap shall not apply to the following Operating Expenses: utilities for the Common Areas (water, sewer, gas, electricity), and fees paid to tax consultants and/or attorney's for contesting taxes (collectively referred to as "Excluded Costs"). Tenant's Pro Rata share for such Excluded Costs shall always be based upon the actual amount of such expenses. Provided further, if the Building or Project is not fully leased, Landlord will be entitled to gross-up management fees as if the Building or Project had been fully leased.

With respect to the Second Amendment Expansion Premises, Landlord shall invoice Tenant monthly for Tenant's Pro Rata Share of the estimated Operating Expenses for each calendar year commencing on the Commencement Date of the Extended Term and may adjust such share each subsequent year based upon anticipated Operating Expenses. The calculation of increases in Tenant's Pro Rata share of Operating Expenses for Tenant's Second Amendment Expansion Premises subsequent to the calendar year 2010 shall be capped at five percent (5%) annually in the manner described above. Provided however, the foregoing cap shall not apply to the Excluded Costs described in the above paragraph. Tenant's Pro Rata share for such Excluded Costs shall always be based upon the actual amount of such expenses. Provided further, if the Building or Project is not fully leased, Landlord will be entitled to gross-up management fees as if the Building or Project had been fully leased.

7. **Controlled Access.** Section 3.05 of the Lease is amended to provide that Tenant may install a controlled access system on the door to the common electrical backup power room utilizing Tenant's existing card reader system. Tenant shall provide Landlord with an access card for use by Landlord's third party property management company, which shall have access to this controlled area 24 hours per day, seven days per week. Also, Landlord agrees to lock the roof access hatch located in the electrical room and install, at Landlord's expense, a new roof access ladder outside the electric room for use by any other tenants and their contractors.

8. **Maintenance Requests.** Section 5.04 of the Lease is amended to provide that in addition to written requests for repairs or maintenance to be made in the manner described in Section 14.07, Tenant may request repairs or maintenance by sending an e-mail request to Landlord's third party property manager at the following e-mail address, [Christy.Means@transwestern.net](mailto:Christy.Means@transwestern.net), or other identified landlord property manager or third party property manager, and requesting and receiving a read receipt acknowledgement from its property manager. Landlord agrees to provide, at all times, Tenant with a contact to address maintenance or repair requests. Landlord further agrees to provide Tenant with written notice in the event of any changes to the maintenance or repair request contact, which will include the new or replacement contact and the effective date of the change.

9. **HVAC Modifications to the Original Leased Premises and the First Amendment Expansion Premises.** Section 5.06 of the Lease is amended to provide that Landlord will, at Landlord's expense, improve and modify the HVAC system currently serving the Original Leased Premises and the First Amendment Expansion Premises (excluding Tenant's server room) according to the mechanical plans prepared by Purdy-McGuire, Inc. and included as part of the Final Drawings (as defined in Exhibit "E"). Following the completion of these HVAC Modifications by Landlord, Tenant will continue to be responsible for the preventative maintenance of the HVAC system (including but not limited to any supplemental units installed by Tenant in the server room) according to the original terms of Section 5.06 of the Lease, except that the preventative maintenance service will be performed on a quarter-annual basis instead of an annual basis.

10. **Leasehold Improvements.** Following full execution of this Second Amendment to Lease, Landlord agrees to provide Tenant with certain improvements to the Leased Premises (the "Leasehold Improvements") in accordance with the terms of the Leasehold Improvement Agreement attached hereto as Exhibit "E".

11. Intentionally deleted.

12. **Broker.** Section 14.16 of the Lease is amended by adding the following provision:

"Tenant hereby represents to Landlord that Jones Lang LaSalle Brokerage, Inc. ("JLL") is the sole and exclusive representative of Tenant in connection with this Second Amendment and that no commission is due or owing to any other broker. JLL shall be paid a commission by Landlord respecting this Second Amendment pursuant to a separate agreement made and entered into by and between said parties. Tenant agrees to indemnify, defend and hold harmless Landlord against any claims by any other brokers, agents other persons or entities what or whom so ever claiming any commission or other compensation associated with this Second Amendment."

13. **Deleted Sections.** Section 16.01 and 16.04 of the Original Lease and section 7 of the First Amendment are no longer relevant and are hereby deleted from the Lease.

14. **Renewal Option.** Section 16.02 of the Lease is amended to provide that if Tenant is not in default and if Tenant has not assigned the Lease or subleased the Leased Premises, Tenant shall have the option to renew the Term of the Lease for one (1) additional period of five (5) years (beginning on the day after the expiration date of the Extended Term) at a Base Rent equal to the prevailing rental rate for properties similar to the Leased Premises in the Lewisville Metropolitan area, with comparable concession packages and with lease terms commencing on or about the date of commencement of the renewal Term. All other terms and conditions as stated in Section 16.02 of the Lease shall remain the same and are not amended. If Landlord and Tenant cannot agree upon a market rate, Landlord and Tenant agree to settle such dispute through arbitration or some other procedure acceptable to Landlord and Tenant.

15. **Right of First Refusal**. Section 16.03 of the Lease is deleted entirely from the Lease and the following language is substituted:

**“16.03 Right of First Refusal (“ROFR Space”).** Provided no event of default exists on the date Landlord receives a third party offer, Landlord hereby grants to Tenant, but not to any assignee or subtenant of Tenant, a right of first refusal during the Extended Term (but not during any renewal of the Extended Term) to Lease the approximate 5,941 square feet of space immediately contiguous to the Leased Premises and as identified on Exhibit A as the ROFR Space. If Landlord receives an offer to lease any portion of the ROFR Space from a third party, Landlord shall notify Tenant in writing of its intention to accept the offer (the “Offer”) and provide Tenant with the terms under which it is prepared to lease the ROFR space. Tenant shall have seven (7) business days from receipt of Landlord’s notice to notify Landlord in writing of Tenant’s intent to exercise its right of first refusal with respect to the ROFR Space, which is the subject of the Offer. If the terms of the Offer include space in addition to the ROFR space, Tenant shall be required to lease all of such space if it desires to lease the ROFR Space. If Tenant does not exercise its right of first refusal within seven (7) days of receipt of Landlord’s notice, then Landlord may lease such space to the third party. If the third party does not execute a Lease for the ROFR Space, Tenant’s right of first refusal shall be reinstated. If Tenant elects to exercise its right of first refusal to lease the ROFR Space (including any additional space) which is the subject of the offer, then the terms for the lease of such ROFR Space shall be the same as those economic terms offered to the third party including length of term. Furthermore, Tenant acknowledges in the event Tenant elects not to exercise their ROFR the ROFR space will be offered to Chelton per their subordinate rights to the space.

16. Intentionally deleted.

17. Intentionally deleted.

18. **SNDA Agreement and Mortgagee’s Approval**. Promptly upon receipt of Tenant’s signed Second Amendment to Lease Agreement, Landlord agrees to request that its mortgagee provide Tenant with a subordination non-disturbance agreement (“SNDA”) using mortgagee’s standard form agreement. **Tenant’s signature on this Second Amendment to Lease is provided to Landlord contingent upon satisfaction of its receipt of Landlord’s mortgagee’s executed SNDA on the mortgagee’s standard form agreement.** Tenant agrees to pay \$1,000 to Landlord upon execution of this Second Amendment, which amount Landlord shall apply as a pre-payment toward the fee charged by the mortgagee for Tenant’s request of the SNDA. In the event the mortgagee’s fee for the SNDA request exceeds \$1,000, Tenant agrees to reimburse Landlord for the difference between the \$1,000 pre-payment and the actual cost. Tenant shall pay such difference (if any) within ten (10) days receipt of invoice and supporting documents from the Landlord. Tenant acknowledges that its payment of the fees stated above in no way constitutes a guarantee that mortgagee will agree to provide the SNDA. In the event that the mortgagee fails to provide Tenant with a signed SNDA agreement on or before thirty-five (35) days following the date of Landlord’s written request to mortgagee, then Tenant may, if Tenant elects, send Landlord written notice requesting that Landlord return all of the signed original Second Amendment to Lease Agreement documents to Tenant thereby rescinding its signature on the Second Amendment to Lease Agreement. In the event mortgagee either, (a) does not respond in the timeframe described above or, (b) refuses to provide Tenant with an SNDA then Tenant shall have the following options: In the case of (a) above, Tenant shall provide Landlord with written notice of its election to either (i) proceed with the Second Amendment to Lease Agreement without obtaining the SNDA, (ii) elect to further delay Landlord’s execution of the Second Amendment to Lease Agreement for an additional ten (10) days, or (iii) rescind its signature and request that the original Second Amendment to Lease Agreements executed by Tenant be returned to Tenant. In the case of (b) above, Tenant shall provide written notice to Landlord electing either (i) or (iii) above. In the event Tenant selects option (ii) above and the mortgagee has still not provided an executed SNDA at the end of the ten (10) day extension, then Tenant shall provide Landlord with written notice electing either option (i) or (iii) above.

19. **Mortgage Approval.** This Second Amendment to Lease Agreement is subject to Landlord's mortgagee's review and approval of the terms contained herein. Following Tenant's execution of the Second Amendment, Landlord will forward the amendment to its mortgagee for review and approval, and will also submit Tenant's financial statements to its mortgagee for its review. Once the Landlord has supplied its mortgagee this amendment plus any additional, reasonably requested supporting documentation, the mortgagee will approve or reject the proposed amendment within five (5) days. Notwithstanding the foregoing, the approval process may take as much as 30 days and in such event, the Landlord agrees that it will regularly follow up with the mortgagee once the process is started in order to achieve as timely a response as possible.

20. The Lease is amended by adding the following Sections 16.07, 16.08 and 16.09:

**"16.07 Tenant's Cooperation as to Phase 1 Environmental Report.** Tenant agrees to cooperate with Landlord and with any environmental consultant (the "EC") Landlord or its mortgagee (or prospective mortgagee) engages to assess the environmental condition of the Leased Premises; provided however, such environmental assessments shall not occur more than once in any twelve (12) month period, unless requested by Landlord's mortgagee or prospective mortgagee. In particular, Tenant will cooperate as required under the Environmental Protection Agency rule which became effective in 2006 titled: Procedures of American Society for Testing and Materials, including the document known as Standard E1527-97 entitled Standard Practice for Environmental Site Assessment; Phase 1 Environmental Assessment so as to satisfy the "all appropriate inquiries requirement" set forth in 42 USCA Section 9601 (35) (B)(i). In sum, (a) the EC must be given complete access to the Leased Premises to perform a complete site inspection; (b) Tenant must identify and provide to the EC all "Helpful Documents" as listed in ASTM E1527-05 (c) Tenant shall make its key manager available for interview by the EC. A key manager of the Leased Premises is one with good knowledge of the uses and physical characteristics of the Leased Premises and shall answer in good faith to the extent of his/her knowledge all questions relevant to the environmental inspection. Landlord agrees to provide Tenant with as much advance notice as is practicable prior to the date of such assessment(s), will use commercially reasonable efforts to not interfere with Tenant's business operations and will ensure that the EC also use commercially reasonable efforts to not interfere with Tenant's business operations.

**16.08 Patriot Act.** Landlord and Tenant each represent to the other that neither they nor any of their affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Contract ("OFAC") (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

**16.09 Confidentiality.** Landlord and Tenant agree to keep the terms of the Lease, the First Amendment, this Second Amendment and any negotiations or letters of intent preceding the preparation and execution of this Second Amendment strictly confidential, and Landlord and Tenant shall not disseminate or disclose any such information to an third parties."

21. Exhibit "A" and Exhibit "B" to the Lease are hereby deleted in their entirety and replaced with Exhibit "A" and Exhibit "B" attached hereto.

22. This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

23. Landlord and Tenant ratify and affirm all the terms of the Lease as modified by the First Amendment and this Second Amendment. All terms defined in the Lease shall have the same meanings in this Second Amendment, except for those terms amended or modified by the First Amendment and this Second Amendment.

24. The submission of this Second Amendment to Tenant for review, negotiation or signature does not constitute a reservation of space or an option or offer to lease. This Second Amendment is not effective or binding unless and until it is executed by and delivered by both Landlord and Tenant.

LANDLORD:

JG Heritage Waters Ridge, Ltd., a Texas limited partnership  
By: JGH WR GP, LLC, a Texas limited liability company,  
its general partner

By: /s/ Greg Greenstein

Name: Greg Greenstein

Title: Manager

TENANT:

INX, Inc., a Delaware corporation

By: /s/ Brian Fontana

Printed Name: Brian Fontana

Title: Vice President

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated June 3, 2011, with respect to the consolidated financial statements and schedule included in the Annual Report of INX Inc. on Form 10-K for the year ended December 31, 2010. We hereby consent to the incorporation by reference of said report in the Registration Statements of INX Inc. on Forms S-8 (File No. 333-150902, effective May 14, 2009, File No. 333-60320, effective May 7, 2001 and File No. 333-41001, effective November 25, 1997).

/s/ GRANT THORNTON LLP

Chicago, Illinois  
June 3, 2011

**Rule 13a-14(a)/15d-14(a) Certification of Principal Executive Officer**

I, Mark T. Hiltz, certify that:

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

Date: June 3, 2011

By: /s/ MARK T. HILZ  
Mark T. Hiltz,  
Chief Executive Officer

**Rule 13a-14(a)/15d-14(a) Certification of Principal Financial Officer**

I, Philip Rydzewski, certify that:

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

Date: June 3, 2011

By: /s/ PHILIP RYDZEWSKI  
Philip Rydzewski,  
Chief Financial Officer

**Section 1350 Certification of Principal Executive Officer**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2003**

In connection with the Annual Report of INX Inc. (the "Company") on Form 10-K for the year ended December 31, 2010 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, I, Mark T. Hilz, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2003, that:

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

/s/ MARK T. HILZ

Mark T. Hilz  
Chief Executive Officer

June 3, 2011

**Section 1350 Certification of Principal Financial Officer**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2003**

In connection with the Annual Report of INX Inc. (the "Company") on Form 10-K for the year ended December 31, 2010 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, I, Philip Rydzewski, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2003, that:

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

By: /s/ PHILIP RYDZEWSKI  
Philip Rydzewski,  
Chief Financial Officer

June 3, 2011