

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Form 10-K  
ANNUAL REPORTS PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended: September 30, 2009

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 000-23025

**Notify Technology Corporation**

(Exact name of registrant as specified in its charter)

**California**

*(State or other jurisdiction of  
incorporation or organization)*

**1054 S. De Anza Blvd., Suite 105, San Jose, California**

*(Address of principal executive offices)*

**77-0382248**

*(I.R.S. Employer  
Identification Number)*

**95129**

*(Zip code)*

**Registrant's telephone number, including area code:**  
**(408) 777-7920**

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

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

**Common Stock, \$0.001 par value**

\_\_\_\_\_  
(Title of Class)  
\_\_\_\_\_

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 (or for such shorter period that the registrant was required to file such reports), 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.

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   
(Do not check if a smaller  
reporting company)

Smaller Reporting Company

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

The aggregate market value of the voting and non-voting Common Stock held by non-affiliates of the registrant as of March 31, 2009 (the last business day of the registrant's most recently completed second fiscal quarter) was \$ 1,641,666 based upon the closing sales price reported for such date on the OTC Bulletin Board. For purposes of this disclosure, shares of Common Stock held by persons who hold more than 5% of the outstanding shares of Common Stock and shares held by officers and directors of the registrant have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily conclusive for other purposes.

At December 3, 2009, registrant had 14,075,662 outstanding shares of Common Stock.

Documents Incorporated By Reference: None

## FORWARD LOOKING STATEMENTS

*You should read the following discussion in conjunction with our audited financial statements and the notes thereto that appear elsewhere in this Annual Report on Form 10-K. The following discussion contains forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, which involve risks and uncertainties. Forward-looking statements generally include words such as “may,” “will,” “plans,” “seeks,” “expects,” “anticipates,” “outlook,” “intends,” “believes” and words of similar import as well as the negative of those terms. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. All forward-looking statements included in this Annual Report on Form 10-K, including, but not limited to, statements regarding the future growth of our wireless product line; statements regarding future revenues from our products; statements regarding future financings; statements regarding future costs; statements regarding future research and development efforts; statements regarding competition in the market for wireless products; statements regarding future patent applications; statements regarding future financial results; and statements regarding future plans to extend our product line; are based on current expectations and are subject to important factors that could cause actual results to differ materially from those projected in the forward-looking statements. Such important factors include, but are not limited to, those discussed below under “Risk Factors” and elsewhere in this Annual Report and in other documents we file with the U.S. Securities and Exchange Commission.*

### PART I

#### ITEM 1. Business.

##### Business History and Overview

We were incorporated in the State of California in August 1994. We are an independent software vendor (“ISV”) focused on providing secure, wireless synchronization of email and personal information management (“PIM”) (calendar, contacts, and tasks information) across a variety of wireless devices and email collaborations suites. Our product provides solutions to organizations and businesses supporting Novell GroupWise™, Microsoft Exchange™, Google Enterprise™ and a variety of alternative email collaboration suites such as the Sun Java Communications Suite, the Oracle Collaboration Suite, the Mirapoint Messaging Suite, CommunigatePro, Scalix Enterprise Server, Kerio Messaging Suite, the MDAemon Messaging Suite, FirstClass, and Meeting Maker. We support a variety of wireless device platforms on each of these suites including the BlackBerry®, Apple® iPhone®, iPod® touch, Palm, Windows Mobile®, and Symbian. In July 2006, we became an official BlackBerry ISV Alliance Partner with Research In Motion. Using our products, our customers can achieve secure wireless mobile access using a variety of handheld wireless devices to manage their email, calendar appointments and address books on any of the email collaboration suites we support. Our products support wireless devices from a wide range of manufacturers and network carriers around the world.

Since 2004, a majority of our revenues have come from our wireless software product line. Wireless products contributed 100% of our total revenues in fiscal 2009 and fiscal 2008. We sell our products primarily through direct sales in the United States and Canada and through resellers internationally.

Our wireless enterprise synchronization product is the only integrated solution providing organizations a single solution to simultaneously support any BlackBerry, iPhone, Palm and Windows Mobile device. Our solution is network independent thereby offering unparalleled flexibility to change devices or networks as technology develops or user needs evolve. In addition, we are the only official provider of wireless email and PIM synchronization middleware supporting BlackBerry wireless devices other than Research In Motion Limited (“RIM”). We have an ISV partnership agreement with RIM supporting our ability to provide email and PIM synchronization to BlackBerry users on over 13 different email platforms. Our NotifyLink Enterprise product provides wireless synchronization for email, calendar, contacts and task information and features an “On-Premise” Edition and an “On-Demand” Edition. Both Editions can be integrated into an organization’s existing network while offering broad wireless device support. Our NotifySync product is a non-server based product that provides BlackBerry users with wireless synchronization for email, calendar, contacts and task information and features using ActiveSync.

The On-Premise Edition product resides on the customer’s server behind its firewall. We have designed the NotifyLink On-Premise Edition for information technology (IT) organizations that desire centralized management and support for their mobile user needs. With the NotifyLink On-Premise Edition, organizations can support their growing mobile workforce while providing a migration path from wired to wireless device usage.

The On-Demand Edition product Edition provides users with the same features as the NotifyLink On-Premise Edition without the need to install a NotifyLink server on the customer's premises. The NotifyLink On-Demand Edition is a cloud based product particularly well suited for smaller user organizations seeking a comprehensive wireless synchronization solution while minimizing infrastructure costs and IT resources.

Our new NotifySync™ gives BlackBerry® users secure, real-time, wireless synchronization of Email and PIM with their ActiveSync Server. NotifySync provides direct connect support to several email platforms; namely, Axigen Mail Server, CommuniGate Pro Mail Server, Microsoft Exchange, Kerio Mail Server, and the Zimbra Collaboration Suite. Organizations receive through NotifySync a synchronization solution that offers them support on all popular cellular voice and data networks as well as any 802.11x wireless network.

For wireless device users, NotifyLink and NotifySync provides support for a variety of wireless networks including cellular networks such as CDMA/1XRTT/EVDO, GSM/GPRS/EDGE, and all fixed wireless networks using 802.11x technology.

## **Products**

### *NotifyLink Enterprise ("NotifyLink")*

NotifyLink Enterprise is comprised of the NotifyLink Enterprise On-Premise Edition and the NotifyLink Enterprise On-Demand Edition. NotifyLink has been designed to address the needs of organizations of all sizes.

Using either of the NotifyLink Enterprise Editions, mobile users can read, compose, reply, forward, mark as read, and delete email messages from their mobile devices. NotifyLink provides a user with "automatic" synchronization of emails sent to the end user's email mailbox and all emails originated, forwarded and replied to from the mobile device will be synchronized with the user's desktop. NotifyLink is device agnostic because email users are provided with a platform-specific smart client, which is loaded on the mobile device. Once the platform-specific smart client mobile device is installed on the user's wireless device and the NotifyLink enterprise server is installed, the user is able to open his or her email, read it and then perform any number of operations including replying, forwarding, and even deleting the email. NotifyLink supports attachment download and upload for Palm, Windows Mobile, and BlackBerry mobile devices. NotifyLink also supports the ability to forward attachments. NotifyLink provides bi-directional mobile synchronization of the user's calendar, contacts, and tasks regardless of whether the information was entered on the mobile device or at the user's desktop. The transmitted information keeps personal calendars continually up to date at both the client server level and the mobile device level.

NotifyLink's wireless functionality supports all BlackBerry, iPhone, Palm and Windows Mobile devices simultaneously over a variety of wireless networks: GSM/GPRS/EDGE, CDMA/1XRTT/EVDO and all fixed wireless networks using 802.11x technology. NotifyLink wireless functionality also provides "over-the-air" synchronization of email and personal information management, thereby freeing users from the requirement to cradle their wireless devices in order to maintain synchronization. NotifyLink provides automatic notification of new email and PIM, eliminating the need for users to initiate a data session in order to retrieve their personal data.

All email and PIM is stored behind an organization's firewall while delivery of information to and from the wireless devices is encrypted utilizing either Triple Data Encryption Standard (TDES) or Advanced Encryption Standard (AES) encryption algorithms. AES is a Federal Information Processing Standard that specifies a cryptographic algorithm for use by U.S. Government organizations to protect sensitive, unclassified information. Information security is increased because NotifyLink supports both TDES and the latest AES.

### **NotifyLink Enterprise On-Premise Edition**

The NotifyLink On-Premise Edition was our first Enterprise offering providing a single enterprise solution supporting the wireless needs of its users through the use of an on-premise server. It is based on a client-server architecture comprised of the NotifyLink device client module and the NotifyLink Enterprise server product. The NotifyLink Enterprise server product involves three components: a database component, a web component and a messaging component. All three components are commonly installed to the same server. In a more distributed environment, each component can be installed to a separate server. The NotifyLink On-Premise Edition is ideal for companies with a volume of mobile professionals who need real-time synchronization of their existing email to any one of a variety of supported mobile devices.

## **NotifyLink Enterprise On-Demand Edition**

In November 2004, we launched our NotifyLink On-Demand Edition for Novell GroupWise. In March 2005, we launched the NotifyLink On-Demand Edition for Microsoft Exchange. Since then, we have continued to expand the number of collaboration suites and devices we support. We added the Apple iPhone device and Google Enterprise collaboration suite in fiscal 2008. The NotifyLink On-Demand Edition provides the same wireless synchronization of email, calendar, contacts and task information as our NotifyLink On-Premise Edition, except without the need of any hardware or software on-premise. The NotifyLink On-Demand Edition provides wireless synchronization services and support from a hardened data center that provides users a high level of reliability and availability. It remotely accesses email and PIM data from the customer email collaboration suite and synchronizes to a user's BlackBerry, iPhone, Palm or Windows Mobile wireless device. The NotifyLink On-Demand Edition provides organizations with a simple solution to their immediate mobility needs. It was designed as a cost efficient alternative for customers whose universe of wireless users does not justify an internal server or who do not have the internal IT resources to maintain a NotifyLink Enterprise server. The NotifyLink On-Demand Edition is also targeted at organizations interested in outsourcing the wireless synchronization of email and PIM.

### *NotifySync*

Our new NotifySync™ for BlackBerry® provides users with secure, real-time, wireless synchronization of Email and PIM directly connecting to any email platform that supports Exchange ActiveSync. Notify licensed the Exchange ActiveSync protocol from Microsoft in 2009 which is used in the NotifySync product. The NotifySync solution provides additional functionality in the areas of security and device management as defined by the Exchange ActiveSync protocol. Today, NotifySync supports several email platforms; namely, the Axigen Mail Server, CommuniGate Pro Mail Server, Microsoft Exchange, Kerio Mail Server, and the Zimbra Collaboration Suite. As other email platforms supporting Exchange ActiveSync come to market NotifySync will increase its support to these new platforms. NotifySync works with any BlackBerry wireless device on all popular cellular voice and data networks as well as any 802.11x wireless network.

### **Sales, Marketing and Distribution**

We are expanding our customer base by gathering leads through several channels. We have an inside sales force that handles leads generated from our corporate web site, the web sites of our collaboration suite and device partners where we maintain a presence, referrals from referral partners with whom we have agreements, wireless carriers and device manufacturers such as RIM and Palm, Inc. Other partners such as Sun Microsystems, Inc. and Oracle recommend NotifyLink as the primary full featured mobility solution to their customers. We will continue to receive referrals from these channel partners only to the extent that they successfully refer our products and services to interested customers. In addition, we attend a variety of trade shows and conferences which also generate leads for our wireless products.

Our NotifyLink installed base consists of numerous contracts sold directly to individual companies. We typically sell contracts on an annual basis. This means that we observe revenue recognition rules that spread the recognition of revenue from the sales of any one month ratably over the term of each contract; commonly a twelve-month period. Because of this practice, any significant increase or decrease in sales in any one period resulting from sales or marketing programs is reflected as a gradual increase or decrease in revenues.

### **Technical and Marketing Support**

We have developed product collateral, expanded marketing programs and improved web-site customer assistance to supplement customer support organization for our NotifyLink and NotifySync products. Marketing and collateral programs include product awareness branding and product training through various media such as Notify web-site marketing, strategic partner web-site marketing, regional, national and international trade shows, strategic partner regional user meetings, carrier training seminars, webinars, user market surveys and a monthly newsletter.

We provide customer technical support and remote product installation assistance for our NotifyLink and NotifySync customers. We maintain a hosting center for our product lines in Ohio. We also provide the support to maintain up-time requirements for our NotifyLink On-Demand products.

## Research and Development

We incurred \$1,917,614 and \$1,620,526 in research and development expenses in fiscal 2009 and 2008, respectively. The increase in our investment in fiscal 2009 reflected our focus on engineering to maintain and develop new products. This focus resulted from our strategy to provide support for new devices as they are released to the market and develop our NotifySync product, thereby creating the need to expand design and testing capabilities. The combination of developing our NotifySync product and the release into the market of numerous new devices by device manufacturers taxed our ability to support new products and assure backward compatibility to aging devices. We increased the size of our test department to respond to the demand in a timely manner. We believe that our future success, if any, depends significantly on our ability to continue to enhance our existing wireless products and to develop new products. Therefore, we intend to continue to incur significant research and development costs. We expect that the main focus of our research and development efforts will remain in wireless software.

## Competition

We believe the market for our wireless products is extremely competitive for certain platforms and less competitive for others. Several companies offer wireless solutions and alternatives for Novell GroupWise and Microsoft Exchange. The market for Zimbra, Kerio and CommuniGate offers users multiple alternatives including our NotifyLink solution. We believe our NotifyLink solution is more complete and includes advanced features not available in alternative solutions and appeals to those customers who require or desire the advanced features. In the markets for Sun, Oracle, Mirapoint and Meeting Maker, we have little to no competition at this time. Many customers may not need the full functionality of our NotifyLink solution and may be satisfied with more basic synchronization functionality offered at no charge by our collaboration suite partners. Our new NotifySync product is sold to a niche market of BlackBerry users who desire to operate in an ActiveSync™ environment. The NotifySync product is a non-server based product whose targeted audience is BlackBerry users in an Exchange or Google environment using ActiveSync.

## Proprietary Rights

We regard various features and design aspects of our products as proprietary and we rely primarily on a combination of copyright, trademark and trade secret laws and employee and third-party nondisclosure agreements to protect our proprietary rights. In fiscal 2006, we sold our rights to several patents for legacy products no longer in production. There are few barriers to entry into the market for our products, and there can be no assurance that any patents we apply for will be granted, that any issued patents will be enforceable or valid, or that the scope of our patents or any patents granted in the future will be broad enough to protect us against the use of similar technologies by our competitors. There can be no assurance, therefore, that any of our competitors, some of whom have far greater resources than we do, will not independently develop technologies that are substantially equivalent or superior to our technology.

In August 2006, we entered into an ISV Partnership with RIM, the maker of the BlackBerry hand-held device, to provide email and PIM synchronization to any of the alternative email collaboration suites we support. Our agreement with RIM is renewable annually.

We may be involved from time to time in litigation to determine the enforceability, scope and validity of any of our proprietary rights or of third parties asserting infringement claims against us. These claims could result in substantial cost to us and could divert our management and technical personnel away from their normal responsibilities.

In November 2003, we entered into a non-exclusive license agreement with NCR that allows us to offer certain product features on our NotifyLink Enterprise Editions that are covered by a patent held by NCR. This agreement requires a royalty payment on Enterprise revenue subject to the patent. The agreement contains a \$500,000 cap on the aggregate royalty to be paid and an exit clause if we were to no longer sell our NotifyLink Enterprise Editions. We paid \$110,981 in royalties under this agreement in the year ended September 30, 2009 compared to \$123,645 in the year ended September 30, 2008. We completely paid the \$500,000 cap as of September 30, 2009 and now hold a fully paid up non-exclusive right for the use of the NCR patent.

## Employees

As of September 30, 2009, we employed 67 persons of whom 27 were engaged in research and development, 15 in sales and marketing, 16 in customer service, and nine in general administration and finance. All but two of these employees are employed on a full-time basis. None of our employees are currently represented by a labor union. We consider our relations with our employees to be good.

## **ITEM 1A. Risk Factors.**

### **Risks Related to Our Business**

#### **We have a history of losses, and there is no assurance of future profitability.**

We commenced operations in August 1994 and through January 1996 were engaged primarily in the sale of hardware products to the telephone market. We made the decision in fiscal 2003 to refocus our strategy on developing and selling software applications for the wireless market. Accordingly, our business has changed substantially in recent years, making it difficult to make period-to-period comparisons of our operations and we face all of the risks and uncertainties encountered by early-stage companies. For the fiscal year ended September 30, 2009 we had net income of \$70,685. For the fiscal years ended September 30, 2008, 2007 and 2006, we incurred net losses of \$287,680, \$426,004, and \$314,892, respectively. Although our cash flows from operations were positive in the years ended September 30, 2009, 2008 and 2007, we are not assured that we can maintain a positive cash flow from operating activities in future periods. There can be no assurance that sales of our products will continue to generate or maintain a positive cash flow or that we will attain or thereafter sustain profitability in any future period.

#### **We may be unable to generate the cash necessary to support a competitive level of research and development activities.**

At September 30, 2009, we had an accumulated deficit of \$24,591,578 and incurred net income for the year ended September 30, 2009 of \$70,685. We also had a working capital deficit at that date of \$1,254,268. Our NotifyLink and NotifySync products will need to sustain a favorable market acceptance in order for us to be able to continue our research and development activities and to fund operating expenses at a level required to stay competitive in our market. Regardless, as our wireless product lines have only generated sufficient contributions to our revenues to date to operate profitably at the current level of research and development for the last fiscal year, an increase in the level of research and development driven by market pressures could require us to obtain further financing. Obtaining additional financing will be subject to a number of factors including market conditions, investor acceptance of our business plan, and investor sentiment. These factors may make the timing, amount, terms and conditions of additional financing unattractive or unavailable to us. If, in a situation that required an increase in research and development we are unable to maintain market acceptance of our wireless products or raise additional financing, we will have to significantly reduce our spending, delay or cancel planned activities or substantially change our current corporate structure. In such an event, we intend to implement expense reduction plans in a timely manner. However, these actions would have material adverse effects on our business, results of operations, and prospects, resulting in a possible failure of our business.

#### **If we are unable to develop, market and sell new and improved wireless software products on a timely basis, we could lose existing and potential customers and our sales could decrease.**

We continue to invest in our wireless software products in order to grow our revenue and improve our financial condition. We need to develop, market and sell new and improved wireless software products on a timely basis to keep pace with technological developments, emerging industry standards, and the growing needs of our sophisticated customers. We may experience difficulties in marketing and selling new products, and our inability to timely and cost-effectively introduce new products and future enhancements, or the failure of these new products or enhancements to achieve market acceptance, could seriously harm our business. Life cycles of wireless software products are difficult to predict, because the market for such products is relatively new and evolving and characterized by rapid technological change, frequent enhancements to existing products and new product introductions, changing customer needs and evolving industry standards. The introduction of competing products that employ new technologies and emerging industry standards could render our products and services obsolete and unmarketable or shorten the life cycles of our products and services. The emergence of new industry standards might require us to redesign our products. If our products are not in compliance with industry standards that become widespread, our customers and potential customers may not purchase our products.

#### **Revenues or expenses may vary, affecting our quarterly operating results.**

We anticipate that we will experience significant fluctuations in our operating results in the future. Fluctuations in operating results may cause the price of our common stock to be volatile. Operating results may vary as a result of many factors, including the following:

- our level of research and development;

- our sales and marketing activities;
- announcements by us or our competitors;
- size and timing of orders from customers;
- new product introductions by us or our competitors;
- future market acceptance of our products;
- price erosion.

Each of the above factors is difficult to control and forecast. Thus, they could have a material adverse effect on our business, financial condition and results of operations.

Notwithstanding the difficulty in forecasting future sales, we generally must undertake research and development and sales and marketing activities and other commitments months or years in advance. Accordingly, any shortfall in product revenues in a given quarter may materially adversely affect our financial condition and results of operations because we are unable to adjust expenses during the quarter to match the level of product revenues, if any, for the quarter. Due to these and other factors, we believe that quarter-to-quarter comparisons of our results of operations are not necessarily meaningful and should not be relied upon as indications of future performance.

**We need to continue to develop our marketing channels and build our sales force.**

We continue to develop our formal referral partner channel and our international reseller partners channel. We participate in informal referral arrangements with several wireless carriers, wireless device manufacturers and several of our collaboration partners for the sale of our NotifyLink and NotifySync products and services where our products assist in the sale of their products. We have a limited direct sales force to sell our NotifyLink and NotifySync products and services to organizations and businesses, and we rely upon both formal and informal referral arrangements to provide leads for our NotifyLink and NotifySync products. To date, most of our referral arrangements are formal, and we will receive referrals only to the extent that our referral partners successfully refer our products and services to potential users. There can be no assurance that we will continue to receive referrals through our formal or informal arrangements. Our NotifyLink and NotifySync solutions are sold into an emerging market and although we have operated on a cash positive basis in the fiscal years ending September 30, 2009, 2008 and 2007, we have only achieved sufficient growth in our sales to generate net income in fiscal 2009.

We are expanding our distribution channels for our wireless products by participating in national and regional trade shows and promotions with strategic partners across the United States and Europe. We cannot predict whether these activities will result in increased wireless revenue. We also have limited international sales due to limited resources to build a reseller network. Our management will need to expend time and effort to develop these channels. Our customer profile consists of a large number of small to medium business customers thereby reducing our dependence on any one customer. We have expanded our internal sales force in response. We are building experience selling into the wireless market but make use of modest marketing and distribution programs to expand our distribution channels and any marketing efforts undertaken by or on behalf of us may not be successful.

**Our products may suffer from defects.**

Most of our products consist of software and services related to our wireless NotifyLink product line. Our NotifyLink products incorporate a mix of new and proven technology that has been tested extensively, but may still contain undetected design flaws. A failure by us to detect and prevent a design flaw or a widespread product defect could materially adversely affect the sales of the affected product and our other products and materially adversely affect our business, financial condition and operating results.

**We depend on key executives.**

Our potential for success depends significantly on key management employees, including our Chairman, President and Chief Executive Officer, Mr. Paul F. DePond, our Vice President of Development, Rhonda Chicone and our Chief Financial Officer, Gerald W. Rice. We have entered into amended and restated employment agreements with these three key management employees. We do not currently have “key man” life insurance on any of these executives or any of our other key employees. The loss of the services of these executives or those of any of our other key employees would materially and adversely affect us. We also believe that our future success will depend in large part on our ability to attract and retain additional highly skilled technical, management, sales and marketing personnel. If we were unable to retain or hire the necessary personnel, the development of new products and enhancements to current products would likely be delayed or prevented. Competition for these highly-skilled employees is intense. Therefore, there can be no assurance that we will be successful in retaining our key personnel or in attracting and retaining the personnel we require for expansion.

**Our intellectual property may not be adequately protected and we may infringe the rights of others.**

We regard various features and design aspects of our products as proprietary and rely primarily on a combination of copyright, trademark and trade secret laws and employee and third-party nondisclosure agreements to protect our proprietary rights. There can be no assurance, therefore, that any of our competitors, some of whom have far greater resources than we do, will not independently develop technologies that are substantially equivalent or superior to our technology.

**We face significant competition.**

We believe the market for our wireless products is extremely competitive for certain platforms, and less competitive for others. Several companies offer wireless email notification and management software for Microsoft Exchange and Novell GroupWise. Many of these companies have greater financial and other resources than we do. Microsoft and Novell offer similar products at little to no charge that function in large parts of the enterprise email market. We sell our products in segments of the market where the free products do not provide adequate functionality or sufficient product features. If these lower cost products were extended to our segment of the market, we would face additional price pressure. We may not be able to compete successfully against better funded competitors as the market for our products evolves and the level of competition increases. A failure to compete successfully against existing and new competitors would materially and adversely affect our business, revenue, operating results, and financial condition.

**If the market for wireless data communications devices does not grow, we may not successfully increase or maintain the sale of our NotifyLink products.**

The overall market for wireless data communications devices has experienced significant growth in recent years. The success of our NotifyLink Enterprise On-Premise and On-Demand products depends upon this growth. There can be no assurance that the market for wireless software products will continue to grow. We cannot predict that growth of our NotifyLink products will continue. If the various markets in which our software products compete fail to grow, or grow more slowly than we currently anticipate, or if we are unable to establish product markets for our new software products, our business, results of operation and financial condition would be materially and adversely affected.

**Risks Related to Our Common Stock**

**If we fail to remain current on our reporting requirements, we could be removed from the OTC Bulletin Board, which would limit the ability of broker-dealers to sell our securities and the ability of shareholders to sell their securities in the secondary market.**

Companies trading on the OTC Bulletin Board, such as Notify Technology, must be reporting issuers under Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”), and must be current in their reports under Section 13 of the Exchange Act, in order to maintain price quotation privileges on the OTC Bulletin Board. If we fail to remain current on our reporting requirements, we could be removed from the OTC Bulletin Board. As a result, the liquidity of our securities could be adversely affected by limiting the ability of broker-dealers to sell our securities and the ability of shareholders to sell their securities in the secondary market

**Our common stock is subject to the “penny stock” rules of the Securities and Exchange Commission, and the trading market in our common stock is limited, which makes transactions in our stock cumbersome and may reduce the investment value of our stock.**

Our common stock is “penny stock” because it is not registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association, pursuant to Rule 3a51-1(a) under the Exchange Act. For any transaction involving a penny stock, unless exempt, the rules require:

- That a broker or dealer approve a person’s account for transactions in penny stocks; and

- That the broker or dealer receives from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the Securities and Exchange Commission relating to the penny stock market, which, in highlight form:

- Sets forth the basis on which the broker or dealer made the suitability determination; and
- That the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the penny stock rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Disclosure also has to be made about the risks of investing in penny stocks in both public offerings and in secondary trading and about the commissions payable to both the broker-dealer and the registered representative, current quotations for the securities and the rights and remedies available to an investor in cases of fraud in penny stock transactions. Finally, monthly statements have to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks.

### **The market for penny stocks has suffered in recent years from patterns of fraud and abuse.**

Shareholders should be aware that, according to SEC Release No. 34-29093, the market for penny stocks has suffered in recent years from patterns of fraud and abuse. Such patterns include:

- Control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer;
- Manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases;
- Boiler room practices involving high-pressure sales tactics and unrealistic price projections by inexperienced salespersons;
- Excessive and undisclosed bid-ask differential and markups by selling broker-dealers; and
- The wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, along with the resulting inevitable collapse of those prices and with consequential investor losses.

Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities. The occurrence of these patterns or practices could increase the volatility of our share price.

### **Our stock price may be volatile**

The market price for our common stock may be affected by a number of factors, including the announcement of new products or product enhancements by us or our competitors, the loss of services of one or more of our executive officers or other key employees, quarterly variations in our or our competitors' results of operations, changes in earnings estimates, developments in our industry, sales of substantial numbers of shares of our common stock in the public market, general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors. In addition, stock prices for many companies in the technology sector have experienced wide fluctuations that have often been unrelated to the operating performances of these companies. These factors and fluctuations, as well as general economic, political and market conditions, such as recessions, may materially adversely affect the market price of our common stock.

**Our charter provisions may discourage acquisition bids.**

Our Articles of Incorporation give our Board of Directors the authority to issue an aggregate of 5,000,000 shares of preferred stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights for these shares, without any further vote or action by our shareholders. The rights of the holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock, while providing flexibility in connection with possible acquisition and other corporate purposes, could have the effect of making it more difficult for a third party to acquire a majority of our outstanding voting stock.

**One of our directors holds a large percentage of our stock and is able to exert substantial control over us.**

David A. Brewer, a member of our Board of Directors and the Chairman of our Audit Committee since 2000, together with an entity affiliated with Mr. Brewer, currently own approximately 56% of our outstanding common stock. In addition, Mr. Brewer owns options to purchase an additional fractional percent of our common stock. This represents a significant influence over all matters requiring approval by shareholders, including the election of directors, amendments to our Articles of Incorporation and significant corporate transactions, such as a merger or other sale of our company or its assets. This concentration of ownership will limit other shareholders' ability to influence corporate matters and may have the effect of delaying or preventing a third party from acquiring control over us.

**Our Articles of Incorporation limit the liability of officers and directors and we have entered into indemnification agreements with them.**

Our Articles of Incorporation eliminate, in certain circumstances, the liability of our directors for monetary damages for breach of their fiduciary duties as directors. We have also entered into indemnification agreements with each of our directors and officers. Each of these indemnification agreements provides that we will indemnify the indemnitee against expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by such director in connection with any civil or criminal action or administrative proceeding arising out of his performance of duties as a director or officer, other than an action instituted by the director or officer. These indemnification agreements also require that we indemnify the director or other party thereto in all cases to the fullest extent permitted by applicable law. Each indemnification agreement permits the director or officer that is party thereto to bring suit to seek recovery of amounts due under the indemnification agreement and to recover the expenses of such a suit if they are successful. We currently have directors' and officers' liability insurance, but there can be no assurance that any or all of our indemnification obligations will be covered by this insurance or that the insurance limits will not be exceeded.

**ITEM 1B. Unresolved Staff Comments.**

Not applicable.

**ITEM 2. Properties.**

Our principal executive offices are located at 1054 South DeAnza Boulevard, Suite 202, San Jose, California 95129. These facilities consist of approximately 3,840 square feet of office space pursuant to a lease that expires March 31, 2012. We have a second location at 6570 Seville Drive, Canfield, Ohio 44406 that houses an engineering group and our technical support organization. The Ohio facility consists of approximately 8,353 square feet of office space pursuant to a lease that expires in October 2012.

**ITEM 3. Legal Proceedings.**

We are not a party to any litigation.

**ITEM 4. Submission of Matters to a Vote of Security Holders.**

No matters were submitted to a vote by security holders during the fourth quarter of fiscal 2009.

## PART II

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

#### Market Information

Our common stock was listed on the Nasdaq SmallCap Market under the symbol NTFY until our common stock was delisted on September 4, 2002. Since September 4, 2002, our common stock has been trading on the OTC Bulletin Board under the symbol NTFY. Trading of our common stock on the OTC Bulletin Board is sporadic and does not constitute an established public market for our shares.

The quarterly high and low bid prices of our common stock during fiscal 2009 and fiscal 2008 are as follows:

#### NTFY Common Stock

	<u>High</u>	<u>Low</u>
<b>Fiscal Year Ended September 30, 2009</b>		
Fourth Quarter	\$ 0.700	\$ 0.055
Third Quarter	\$ 0.380	\$ 0.150
Second Quarter	\$ 0.270	\$ 0.100
First Quarter	\$ 0.330	\$ 0.055
<b>Fiscal Year Ended September 30, 2008</b>		
Fourth Quarter	\$ 0.330	\$ 0.200
Third Quarter	\$ 0.250	\$ 0.200
Second Quarter	\$ 0.212	\$ 0.180
First Quarter	\$ 0.530	\$ 0.170

These quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not represent actual transactions. The quarterly high and low bid prices of our common stock were provided by The Nasdaq Stock Market LLC.

#### Holders

As of December 9, 2009, there were 62 holders of record of our common stock.

#### Dividends

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain all future earnings for the expansion and operation of our business and do not anticipate paying cash dividends in the foreseeable future.

#### Securities Authorized for Issuance Under Equity Compensation Plans

The information required by this item regarding equity compensation plans is incorporated by reference from Part III, Item 12 of this Annual Report on Form 10-K.

#### Recent Sales of Unregistered Securities

We did not sell any of our unregistered securities during fiscal 2009.

#### ITEM 6. Selected Financial Data.

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and not required to provide the information required under this item.

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

### **Overview**

We were incorporated in the State of California in August 1994. We are an independent software vendor ("ISV") focused on providing secure, wireless synchronization of email and personal information management ("PIM") (calendar, contacts, and tasks information) across a variety of wireless devices and email collaboration suites. Our products provide solutions to organizations and businesses supporting Novell GroupWise™, Microsoft Exchange™, Google Enterprise™ and a variety of alternative email collaboration suites such as the Sun Java Communications Suite, the Oracle Collaboration Suite, the Mirapoint Messaging Suite, CommunicatePro, Scalix Enterprise Server, Kerio Messaging Suite, the MDAemon Messaging Suite, FirstClass, and Meeting Maker. We support a variety of wireless device platforms on each of these suites including the BlackBerry®, Apple® iPhone®, iPod® touch, Palm, Windows Mobile®, and Symbian. In July 2006, we became an official BlackBerry ISV Alliance Partner with Research In Motion. Using our products, our customers can achieve secure wireless mobile access using various handheld wireless devices to manage their email, calendar appointments and address books on any of the email collaboration suites we support. Our products support wireless devices from a wide range of manufacturers and network carriers around the world.

We completed our initial public offering in September 1997, receiving net proceeds of approximately \$6.2 million. Prior to our initial public offering, our working capital requirements were met through the sale of equity and debt securities in private placements and, to a lesser extent, product revenue and a line of credit. We have sustained significant operating losses in every fiscal period since inception and expect to incur quarterly operating losses in the future. Our limited operating history makes the prediction of future operating results difficult if not impossible. Future operating results will depend on many factors, including the demand for our products, the level of product and price competition, and our ability to develop and market new products and control costs. There can be no assurance that our revenues will grow or be sustained in future periods or that we will ever achieve profitability.

### **Critical Accounting Policies and Estimates**

Our financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make significant estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. We evaluate estimates, including those related to bad debts, inventories and income taxes, on an ongoing basis. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies, among others, involve the more significant judgments and estimates used in the preparation of our financial statements:

We recognize software license agreements when persuasive evidence of an agreement exists, delivery of the product has occurred, the license fee is fixed or determinable and collection is probable. Our license agreements take two basic forms. The first form of agreement is essentially a subscription agreement that is used in connection with our hosting arrangement where we provide both the software combined with hosting services from a hardened site. The agreement generally has a fixed term and the license revenue is recognized ratably over the term of each service contract. The second form of agreement involves the purchase of a license and a service agreement based on the Vendor Supplied Objective Evidence ("VSOE") where only the service agreement is renewed each year. We recognize the license portion at the point of sale for those sales where VSOE has been established and the service portion ratably over the term of the service contract. For those contracts where VSOE has not been established, the revenue of the entire contract is recognized ratably over the term of the contract. Our sales process provides for an optional trial period prior to the agreement to purchase and no revenue is recognized during that trial period.

We recognize revenue when the title and risk of loss have passed to the customer, there is persuasive evidence of an arrangement, delivery of the product has occurred or services have been rendered, the sales price is fixed or determinable and collection is probable. Installation, when required, is commonly completed prior to an agreement to facilitate a trial of the product. Technical assistance is available during the sales process and is unrelated to the service component portion of the final arrangement. Revenue related to installation is recognized when the agreement is signed and the contract period has commenced.

The Company accounts for all compensation related to stock, options or warrants using a fair value based method whereby compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. The Company uses the Black-Scholes pricing model to calculate the fair value of options and warrants issued to both employees and non-employees. Stock issued for compensation is valued using the market price of the stock on the date of the related agreement.

We maintain allowances for doubtful accounts for estimated bad debts. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances might be required.

The carrying value of our deferred tax assets is dependent upon our ability to generate sufficient future taxable income in certain tax jurisdictions. Should we determine that we would not be able to realize all or part of our deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to income in the period such determination was made. Currently, our deferred tax assets are fully reserved.

## **Results of Operations**

### ***Fiscal Years Ended September 30, 2009 and 2008***

#### *Revenue*

Revenue consists of net revenue from the sale of NotifyLink and NotifySync software licenses, installation fees and the sale of third party software. We recognize the license portion at the point of sale for those sales where VSOE has been established and the service portion ratably over the term of the service contract. For those contracts where VSOE has not been established, the revenue of the entire contract is recognized ratably over the term of the contract. Maintenance revenue is recognized on a straight-line basis over the term of each contract. Installation revenue is recognized upon completion of trial activity and finalizing the software agreement. Third party software revenue is recognized upon delivery to the customer. Revenues for the fiscal year ended September 30, 2009 increased to \$6,032,257 from \$4,640,723 in the fiscal year ended September 30, 2008.

#### *Cost of Revenue*

Cost of revenues consists of the hosting center costs to support the service portion of our NotifyLink products, the cost of re-sale software related to NotifyLink and royalty expense to NCR for certain technology utilized in our NotifyLink products. Cost of revenues decreased to \$153,583 in the fiscal year ended September 30, 2009 from \$153,755 in the fiscal year ended September 30, 2008.

The gross margin was 97% in both fiscal 2009 and fiscal 2008. The major cost component of our gross margin is the royalty expense mentioned above that is applied at a constant percentage of revenues regardless of volume. We finished paying for a fully-paid license with NCR in July 2009. We made the agreement with NCR in 2003 and have made quarterly payments for the last six years ending in the fourth quarter of 2009. The other major costs of our business, consisting of product design and sales/support, are categorized in operating expenses and thus do not impact gross margin.

#### *Research and Development*

Research and development expenses consist primarily of personnel costs and expenses. We incurred \$1,917,761 in research and development expenses in fiscal 2009, an increase from the \$1,620,526 in research and development expenses incurred in fiscal 2008. Virtually all the increase is due to salaries, as we invested heavily in expanding the NotifyLink product line and readying the new NotifySync product line that launched in January 2009. Our development efforts were devoted to improving our software product in the area of device management, porting our solution to new devices and creating new products. We believe that our future success, if any, depends significantly on our ability to continue to enhance our existing wireless products and to develop new products. Therefore, we intend to continue to incur significant research and development costs.

### *Sales and Marketing*

Sales and marketing expense consists primarily of personnel, trade show and travel costs and sales commissions related to our sales and marketing efforts. Sales and marketing expenses increased to \$2,322,315 for the fiscal year ended September 30, 2008 from \$1,881,552 for the fiscal year ended September 30, 2007. This increase was primarily attributable to an increase of approximately \$250,000 in personnel costs and an increase of approximately \$81,000 in commissions and referral fees. We use an internal sales force and a customer support staff to facilitate the NotifyLink sales process. The sales process also involves a customer trial period that, in turn, requires an initial installation process involving assistance from technical support personnel. We have found that good technical support is an important sales and retention tool for the customers in our market. We anticipate that sales and marketing expenses will increase in future quarters as we hire additional sales and customer support personnel and attempt to expand our existing and create new distribution channels.

### *General and Administrative*

General and administrative expense consists of general management and finance personnel costs, insurance expense, rent expense, professional fees and other general corporate expenses. General and administrative expenses increased to \$1,574,959 for fiscal 2009 versus \$1,286,112 for fiscal 2008. The increase was spread across rent, legal, depreciation and merchant expenses among other categories. Bad debt expense was \$44K for the year which was up from \$9K for the fiscal year ended September 30, 2008.

### *Income Taxes*

Due to our historical losses, the Company continues to recognize a full valuation allowance for deferred tax assets. Accordingly, there is no provision for federal or state income taxes in fiscal 2009 and 2008. We may incur a net operating loss in future periods. As of September 30, 2009, we had federal and state net operating loss carryforwards of approximately \$607,600 and \$440,000, respectively. The net loss carryforwards and certain research and development tax credit carryforwards will expire in tax years 2016 through 2028 if not utilized. Utilization of the net operating losses and credits may be subject to a substantial annual limitation due to ownership change limitations provided by the Internal Revenue Code of 1986, as amended (the "Code"), and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits carryforwards before full utilization. For financial reporting purposes, deferred tax assets primarily related to the net operating carryforwards recognized under Financial Accounting Standard No. 109, "Accounting for Income Taxes," has been fully offset by a valuation allowance.

### **Liquidity and Capital Resources**

During fiscal 2008 and 2009, we funded our operations through a combination of cash provided by operations and existing cash balances. Our ability to fund our recurring losses from operations depends upon the continued success of our NotifyLink and NotifySync wireless e-mail notification market solutions.

A significant characteristic of our business is the sale of our products customarily in the form of annual contracts paid for upon signing with the revenue amortized over the twelve-month service period. The unamortized contract revenue is reflected in the deferred revenue account on our balance sheet. As our installed base grows, this practice increases the deferred revenue liability on the balance sheet provided we add new contracts faster than old contracts expire.

The major cost of operations is comprised of (1) the engineering design of our products offered for sale and (2) the sales process of a contract that requires both direct sales effort and technical support hours to facilitate a 30-day trial period of our software prior to purchase. The increase in the NotifyLink deferred revenue to \$3,133,156 as of September 30, 2009 from \$2,418,235 as of September 30, 2008, combined with the increase in revenues over the same period, indicates that total product revenue improved in fiscal 2009. Deferred revenue also represents the obligation to service the contracts underlying the revenue. However, the cash flow required to provide the service of contracts is significantly less than the amortized revenue recognized each month.

Our continued operations depend on the cash flow from sales of NotifyLink and NotifySync. In the event sales of our products decline or our revenue is otherwise interrupted, we would have to reduce our operations to minimally service our existing contract obligations unless we secured additional financing. If we were unable to increase our revenues or secure financing, we would have to restructure our business to reduce costs.

We are currently planning to expand our product offerings into our current or other niche markets. We believe that these niche markets are not adequately addressed by market competitors at the present time. We also intend to capitalize on our ability to offer a single middleware solution for those companies deploying a variety of manufacturers' devices on a single email system. The success of our business operations will depend upon a continued favorable market acceptance for our wireless software products.

We also continue to evaluate our opportunities to obtain financing to provide additional funding for our operations.

In the event we require additional capital, we cannot predict whether we will be able to obtain financing on commercially reasonable terms, if at all. Any future financings may take the form of debt or equity securities or a combination of debt and equity, including convertible notes or warrants. In the event we are required to obtain additional financing, we cannot predict whether we could successfully conclude a financing with any new investors. Minimally, we expect that any additional financing could result in a substantial dilution of the equity and voting interests of our current shareholders.

In July 2008, warrants and options to purchase shares of our preferred stock that had been outstanding since July 2001, expired without having been exercised. At September 30, 2009, we had outstanding a total of 14,075,662 shares of common stock and options to purchase 3,578,569 shares of common stock. There are no remaining obligations associated with the expired warrants and options. This simplification of our equity structure could be advantageous in the event we require additional capital.

At September 30, 2009, we had cash and cash equivalents of \$1,565,447 compared to \$1,010,607 at September 30, 2008. Over the last several years, we have financed our operations primarily through cash provided by operating activities and existing cash balances. The net cash provided by operating activities equaled \$726,306 in the year ended September 30, 2009 versus net cash provided by operating activities of \$284,725 in the year ended September 30, 2008. The cash provided by operations in the year ended September 30, 2009 resulted from net income of \$70,685, an increase in deferred revenue of \$714,921, an increase in accounts payable and accrued liabilities of \$110,305 and depreciation expense of \$93,127 offset by an increase in accounts receivable of \$300,808. Although we have been cash positive in the last three fiscal years, we anticipate that we will have negative cash flow from time to time in operating activities in future periods.

Net cash used in investing activities was an outflow of \$167,021 and \$134,195 for the twelve-month periods ended September 30, 2009 and 2008, respectively. The net cash outflow in both periods was due to capital purchases.

Net cash used by financing activities was an outflow of \$4,445 and inflow of \$20,302 for the respective years ended September 30, 2009 and 2008. The net cash outflow for financing activities for the year ended September 30, 2009 was due to payments on capital leases. The net inflow for financing activities for the year ended September 30, 2008 was a combination of an inflow of \$27,934 from the proceeds of the exercise of options and \$7,632 outflow from payments on capital leases.

#### **Impact of Inflation**

We believe the impact of inflation and changing prices on net revenues and on operations has been minimal during the past two years.

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

We have no off-balance sheet arrangements as defined by Item 303(c) of Regulation S-B.

#### **ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk.**

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and not required to provide the information required under this item.

#### **ITEM 8. Financial Statements and Supplementary Data.**

Our financial statements, related notes thereto and supplementary data required by this item are incorporated by reference from Part IV, Item 15 of this Form 10-K and are presented beginning on page F-1.

#### **ITEM 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.**

None.

#### **ITEM 9A(T). Controls and Procedures.**

##### **Disclosure Controls and Procedures**

Our Chief Executive Officer and our chief Financial Officer, after evaluating our disclosure controls and procedures (as defined in the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Exchange Act")), as of the end of the period covered by this Annual Report on Form 10-K, have concluded that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

## **Management's Annual Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed 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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an assessment of the effectiveness of our internal control over financial reporting based on certain criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective in providing reasonable assurance regarding the reliability of financial reporting and preparation of the financial statements for external purposes in accordance with U.S. generally accepted accounting principles as of September 30, 2009.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. This management report was not subject to attestation by our registered public accounting firm pursuant to temporary rules of the SEC that permit us to provide only management's report in this Annual Report on Form 10-K.

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

There was no change in our internal control over financial reporting that occurred during the quarter ended September 30, 2009, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### **ITEM 9B. Other Information**

None.

## PART III

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

#### Directors and Executive Officers

Our directors and executive officers and their ages as of September 30, 2009, are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Paul F. DePond	56	Chief Executive Officer, President and Chairman
Gerald W. Rice	61	Chief Financial Officer and Secretary
Rhonda Chicone	45	Vice President of Product Development
David A. Brewer (1)(2)	57	Director
Mark Frappier (1)(2)	54	Director

(1) Member of the Audit Committee

(2) Member of the Compensation Committee.

#### Biographical Information for Directors and Executive Officers

*Paul F. DePond*, our founder, has served as our President, Chief Executive Officer and Chairman of the Board of Directors since our inception in August 1994. From September 1992 through May 1994, Mr. DePond served as Vice President of Corporate Marketing at Telebit Corporation, a supplier of high speed modems and dialup remote access products. From January 1991 through September 1992, Mr. DePond served as Vice President of Marketing at Alantec Corporation, a manufacturer of networking products. Mr. DePond received a Bachelor of Science Degree in Electrical and Computer Engineering from the University of Michigan, Ann Arbor in 1980 and Masters Degree in Computer Science from the University of Michigan, Ann Arbor in 1980.

*Gerald W. Rice* has served as our Chief Financial Officer and Secretary since August 1994. From November 1993 to June 1996, he owned Comprehensive Business Services, a financial services company franchise. From April 1992 to April 1993, Mr. Rice served as Controller at Surface Sciences Instruments, a manufacturer of capital equipment for surface chemical analysis. From June 1990 to April 1992, Mr. Rice was Vice President of Finance and Secretary of Applied Dielectrics, a manufacturer of microwave circuit boards. Mr. Rice received an A.A. from Ohlone College in 1969 and a B.A. in Accounting from California State College of Stanislaus in 1971.

*Rhonda Chicone* has served as our Vice President of Product Development since July 2001. From October 2000 to July 2001, Ms. Chicone served as our Director of Engineering and from October 1999 to October 2000, she served as our Engineering Manager. From January 1999 to October 1999, Ms. Chicone served as one of our senior software engineers. From September 1996 to January 1999, she was President of Tech-Xpress Enterprises, Inc. Ms. Chicone received a Science degree in Computer Science from Youngstown University in 1985 and a Master's of Science in Technology from Kent University in 2002.

*David A. Brewer* has served as one of our directors since February 2000. Since January 1999, Mr. Brewer has served as general manager for Aragon Ventures LLC, a private equity investment firm. Mr. Brewer has been Chairman of the End Poverty Foundation, a charity organization, since January 2001. Since September 2002, Mr. Brewer has also served as President and Chief Executive Officer of PriaVision, Inc., a private company developing advanced technologies for ophthalmic surgeons. Mr. Brewer also serves on the board of directors of hereUare, Inc.

*Mark Frappier* has served as one of our directors since October 2007. Since 1994, Mr. Frappier has provided technical consulting to law firms and high tech corporations involved in complex patent litigation. From 1993 to 1994, he was the Director of Technical Services at Rational Software and from 1989 to 1993 he was the Director of Customer Service at Cooperative Solutions, Inc. Mr. Frappier began his career as an engineer designing computers at Rational Machines, Inc., Wang, and Data General. He graduated with a Bachelor of Science degree in Engineering from Northeastern University in 1978.

## **Term of Office**

All directors are elected and serve until the next annual meeting of shareholders or until the election and qualification of their successors. All executive officers serve at the discretion of our Board of Directors.

## **Family Relationships**

There are no family relationships between any of our directors or executive officers.

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

Section 16(a) of the Exchange Act requires our executive officers and directors and persons who own more than ten percent of a registered class of our equity securities to file an initial report of ownership on Form 3 and changes in ownership on Form 4 or 5 with the Securities and Exchange Commission and the National Association of Securities Dealers, Inc. Executive officers, directors and greater than ten percent shareholders are also required by SEC rules to furnish us with copies of all Section 16(a) forms they file. Based solely on our review of copies of such forms received by us, or written representations from certain reporting persons, we believe that, except as noted below, during the fiscal year ended September 30, 2009 all filing requirements applicable to our officers, directors and ten percent shareholders were fulfilled.

Mr. Brewer was delinquent in the filing of a Form 4 relating to the grant of a stock option on December 17, 2008. This Form 4 is currently being prepared for filing.

## **Code of Ethics**

We have adopted the Notify Technology Corporation Code of Ethics for Principal and Executive and Senior Financial Officers (“ Code of Ethics” ). The Code of Ethics applies to our principal executive officer, our principal financial officer, our principal accounting officer or controller, and persons performing similar functions and responsibilities who shall be identified by our audit committee from time to time.

The Code of Ethics is available at our website, located at <http://www.notifycorp.com> .

## **Audit Committee**

We have an Audit Committee that was established in accordance with Section 3(a)(58)(A) of the Exchange Act. Messrs. Brewer and Frappier currently serve as the members of the Audit Committee. Mr. Frappier is “independent” as defined under the NASDAQ listing rules. The board of directors has determined that Mr. Brewer is an “audit committee financial expert” as defined in Item 407(d) of Regulation S-K promulgated by the Securities and Exchange Commission. Mr. Brewer is not “independent” by virtue of his affiliation with 21X Investments, LLC, our largest shareholder.

## **ITEM 11. Executive Compensation.**

### **Summary Compensation Table**

The following table sets forth information for the two most recently completed fiscal years concerning the compensation of (i) the Chief Executive Officer and (ii) the two other most highly compensated officers during the fiscal year ended September 30, 2009 (together the “Named Executive Officers”).

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Option Awards (\$ (1))	Nonequity incentive plan compensation (\$ (2))	All Other Compensation (\$ (3))	Total (\$)
Paul F. DePond	2009	303,949	15,000	25,000	28,180	16,218	388,347
Chief Executive Officer	2008	276,576	15,000	—	12,094	23,625	327,295
Gerald W. Rice	2009	234,138	7,500	7,830	14,090	13,654	277,212
Chief Financial Officer	2008	193,538	7,500	—	6,047	14,205	221,290
Rhonda Chicone	2009	167,421	7,500	7,830	14,090	5,316	202,157
Vice President of Product Development	2008	136,808	7,500	—	6,047	6,741	157,096

- (1) The amounts shown do not reflect compensation actually received. Instead, the amounts shown are the compensation costs that we recognized in fiscal 2009 and 2008 for stock option awards granted during and prior to those years in accordance with applicable accounting guidance for option awards.
- (2) Represents payments made under an executive incentive bonus program based on a percentage of sales to major accounts managed at the executive level.
- (3) Represents payments of health insurance premiums and dental benefits on behalf of the Named Executive Officers.

## Narrative Disclosure to the Summary Compensation Table

### Employment Agreements and Change-in-Control Arrangements

*Paul F. DePond.* In October 2007, we entered into an Amended and Restated Employment Agreement with Mr. DePond. The agreement provides for an annual base salary of \$255,000. Under the Agreement, Mr. DePond is also eligible to receive annual bonuses based upon targets approved by our Board of Directors.

The Agreement further provides that in the event that Mr. DePond's employment with the Company is terminated without "Cause" (as defined in the Agreement) within 24 months following a "Change of Control" (also as defined in the Agreement) or at any time apart from a Change of Control, Mr. DePond is entitled to receive the following:

- severance compensation equal to a continuation of his salary for a period of 18 months;
- the maximum amount of his bonus for the fiscal year in which such involuntary termination occurs that could have been received had he satisfied all conditions necessary to earn such maximum amount of the bonus during the remainder of such fiscal year;
- 100% Company-paid dental and life insurance coverage and reimbursement for all premium payments paid under COBRA for continuing health insurance coverage as provided to Mr. DePond and his dependents immediately prior to such termination until the earlier of (i) 18 months following such termination, or (ii) the date Mr. DePond becomes covered under another employer's dental, life or health insurance plan. In lieu of such reimbursements, Mr. DePond may, at his sole election, receive a one-time cash payment equal to the total amount of such premium payments Mr. DePond would be required to make for 18 months following such termination; and
- outplacement services for a period of up to 6 months following such termination with a maximum obligation to the Company of \$9,000 for such services.

Mr. DePond is not entitled to severance compensation in the event of a termination for Cause or upon his voluntary resignation. In the event of a termination due to disability, Mr. DePond is entitled to receive only those severance or disability benefits as are established under the Company's then existing severance and benefits plans and policies. In the event of a termination due to Mr. DePond's death, his estate is entitled to receive a one-time cash payment equal to his annual base salary less the amount he is entitled to receive under the Company-paid life insurance policy.

*Gerald W. Rice* In October 2007, we entered into an Amended and Restated Employment Agreement with Mr. Rice that provides for an annual base salary of \$185,000. Under the Agreement, Mr. Rice is also eligible to receive annual bonuses based upon targets approved by our Board of Directors.

The Agreement further provides that in the event that Mr. Rice's employment with the Company is terminated without "Cause" (as defined in the Agreement) within 24 months following a "Change of Control" (also as defined in the Agreement) or at any time apart from a Change of Control, Mr. Rice will be entitled to receive the following:

- severance compensation equal to a continuation of his salary for a period of 12 months;
- the maximum amount of his bonus for the fiscal year in which such involuntary termination occurs that could have been received had he satisfied all conditions necessary to earn such maximum amount of the bonus during the remainder of such fiscal year;
- 100% Company-paid dental and life insurance coverage and reimbursement for all premium payments paid under COBRA for continuing health insurance coverage as provided to Mr. Rice and his dependents immediately prior to such termination until the earlier of (i) 12 months following such termination, or (ii) the date Mr. Rice becomes covered under another employer's dental, life or health insurance plan. In lieu of such reimbursements, Mr. Rice may, at his sole election, receive a one-time cash payment equal to the total amount of such premium payments Mr. Rice would be required to make for 12 months following such termination; and
- outplacement services for a period of up to 6 months following such termination with a maximum obligation to the Company of \$9,000 for such services.

Mr. Rice is not entitled to severance compensation in the event of a termination for Cause or upon his voluntary resignation. In the event of a termination due to disability, Mr. Rice is entitled to receive only those severance or disability benefits as are established under the Company's then existing severance and benefits plans and policies. In the event of a termination due to Mr. Rice's death, his estate is entitled to receive a one-time cash payment equal to his annual base salary less the amount he is entitled to receive under the Company-paid life insurance policy.

*Rhonda Chicone*. In October 2007 we entered into an Amended and Restated Employment Agreement with Ms. Chicone that provides for an annual base salary of \$135,000. Under the Agreement, Ms. Chicone is also eligible to receive annual bonuses based on targets approved by our Board of Directors.

The Agreement further provides that: In the event that Ms. Chicone's employment with the Company is terminated without Cause (as defined in the Agreement) within 24 months following a "Change of Control" (also as defined in the Agreement) or at any time apart from a Change of Control, Ms. Chicone will be entitled to receive the following:

- severance compensation equal to a continuation of her salary for a period of 12 months;
- the maximum amount of her bonus for the fiscal year in which such involuntary termination occurs that could have been received had she satisfied all conditions necessary to earn such maximum amount of the bonus during the remainder of such fiscal year;
- 100% Company-paid dental and life insurance coverage and reimbursement for all premium payments paid under COBRA for continuing health insurance coverage as provided to Ms. Chicone and her dependents immediately prior to such termination until the earlier of (i) 12 months following such termination, or (ii) the date Ms. Chicone becomes covered under another employer's dental, life or health insurance plan. In lieu of such reimbursements, Ms. Chicone may, at her sole election, receive a one-time cash payment equal to the total amount of such premium payments Ms. Chicone would be required to make for 12 months following such termination; and
- outplacement services for a period of up to 6 months following such termination with a maximum obligation to the Company of \$9,000 for such services.

Ms. Chicone is not entitled to severance compensation in the event of a termination for Cause or upon her voluntary resignation. In the event of a termination due to death or disability, Ms. Chicone is entitled to receive only those severance or disability benefits as are established under the Company's then existing severance and benefits plans and policies.

The foregoing Agreements define a "Change of Control" as (i) the acquisition of more than 30% of our total voting power by any person or group; (ii) a change in a majority of our Board of Directors occurring within a two-year period; or (iii) the approval by our shareholders of (A) a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, (B) a sale of all or substantially all of our assets, or (C) a liquidation; provided, however, that a public offering of our common stock does not constitute a Change of Control. The Agreements define "Cause" as (i) an act of personal dishonesty in connection with such person's responsibilities as an employee and which is intended to result in the substantial personal enrichment of such person; (ii) a conviction of a felony that the Board of Directors reasonably believes had or will have a material detrimental effect on our reputation or business; and (iii) willful act by the person which constitutes gross misconduct and is injurious to us. The Agreements define "disability" as the person's inability to perform duties under the Agreement due to mental or physical illness and such inability, at least 26 weeks after its commencement, is determined to be total and permanent by a physician.

### **Option Exchange**

On December 17, 2008, our Board of Directors approved an exchange of options to purchase an aggregate of 900,000 shares of our common stock issued under our 1997 Stock Plan for options to purchase an aggregate of 169,470 shares of our common stock under our 2008 Equity Incentive Plan, with such options being of equal fair market value as computed using a Black-Scholes valuation model based on the market value of our common stock on December 16, 2008. As a result, there was no financial impact to us as a result of the exchange. The exchange was made with respect to only one set of options, all granted on June 29, 2001, and involved only three individuals, all who consented to the exchange: Paul DePond, Rhonda Chicone and Gerald W. Rice.

### **Stock Option Grants**

On December 17, 2008, Mr. DePond received options to acquire 799,288 shares of our common stock at an exercise price of \$0.14 per share. Additionally, on the same date, Mr. Rice and Ms. Chicone each received options to acquire 250,363 shares of our common stock at an exercise price of \$0.14 per share. These options were granted at fair market value on the date of grant with terms of up to ten years. Under the terms of these option grants, the options commence vesting upon the grant date and continue to vest ratably over the remainder of the three-year vesting period.

### **Executive Management Bonus Plan**

The Named Executive Officers participate in an executive management bonus plan that awards bonuses based on sales to major accounts that are negotiated and sold at the executive management level. The bonus plan is funded with that part of a sale that would be commonly paid out to internal sales representatives if they were involved in the sale. The participants are eligible to be paid the bonus upon closing each sale. The bonus pool is allocated among each of the Named Executive Officers using a fixed percentage.

### **Outstanding Equity Awards at 2009 Fiscal Year End**

The following table sets forth certain information for the Named Executive Officers with respect to securities underlying unexercised options at September 30, 2009.

Name	Option Awards			
	Number of Securities Underlying Unexercised Options( #) Exercisable	Number of Securities Underlying Unexercised Options( #) Unexercisable	Option Exercise Price(\$)	Option Expiration Date
Paul F. DePond	50,000(1)	—	\$ 8.813	2/23/2010
	50,000(2)	—	\$ 2.750	11/29/2010
	150,000(1)	—	\$ 0.320	10/10/2011
	400,000(1)	—	\$ 0.250	8/5/2013
	250,000(1)	—	\$ 0.260	11/8/2014
	200,002(5)	600,006(5)	\$ 0.140	12/16/18
Gerald W. Rice	50,000(1)	—	\$ 8.813	2/23/2010
	10,000(2)	—	\$ 2.750	11/29/2010
	50,000(3)	—	\$ 0.320	10/10/2011
	125,000(1)	—	\$ 0.250	8/5/2013
	75,000(1)	—	\$ 0.260	11/8/2014
	62,500(5)	187,503(5)	\$ 0.140	12/16/18
Rhonda Chicone	5,000(4)	-	\$ 6.375	11/9/2009
	20,000(1)	—	\$ 8.813	2/23/2010
	10,000(4)	—	\$ 3.875	7/17/2010
	50,000(1)	—	\$ 0.320	10/10/2011
	150,000(1)	—	\$ 0.250	8/5/2013
	75,000(1)	—	\$ 0.260	11/8/2014
	62,500(5)	187,503(5)	\$ 0.140	12/16/18

- (1) Options vested in equal monthly installments over a 36-month period;
- (2) Options vested in equal monthly installments over a 25-month period;
- (3) Options vested upon date of grant;
- (4) Options vested in equal monthly installments over a 48 month period;
- (5) Options vest in equal monthly installments over a 36-month period from the date of grant, December 17, 2008.

#### Director Compensation

The table below summarizes all compensation of our directors for fiscal 2009:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
David Brewer	—	—	\$ 1,566(2)	—	—	—	\$ 1,566
Mark Frappier	—	—	\$ 1,566(3)	—	—	—	\$ 1,566

(1) The amounts shown do not reflect compensation actually received. Instead, the amounts shown are the compensation costs that we recognized in fiscal 2009 for stock option awards granted during and prior to that year in accordance with applicable accounting guidance for option awards.

(2) Mr. Brewer holds stock options to purchase 80,000 shares of our common stock.

(3) Mr. Frappier holds a stock option to purchase 50,000 shares of our common stock

#### **Narrative to Director Compensation Table**

Our directors do not currently receive any cash compensation for service on the board of directors or any committee thereof.

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

The following table sets forth certain information regarding beneficial ownership of our common stock as of December 3, 2009, by (i) each person or entity who is known by us to own beneficially more than 5% of the outstanding shares of our common stock, (ii) each of our directors, (iii) each of the Named Executive Officers, and (iv) all directors and executive officers as a group.

The table is based on information provided to us or filed with the Securities and Exchange Commission ("SEC") by our directors, executive officers and principal shareholders. Beneficial ownership is determined in accordance with the rules of the SEC, and includes voting and investment power with respect to shares. Shares of common stock as indicated in the table, issuable upon exercise of options that are currently exercisable or are exercisable within 60 days after December 3, 2009, are deemed outstanding for purposes of computing the percentage ownership of the person holding such options or warrants, but are not deemed outstanding for computing the percentage of any other shareholder. Unless otherwise indicated, the address for each shareholder listed in the following table is c/o Notify Technology Corporation, 1054 S. De Anza Blvd., Suite 202, San Jose, California 95129.

Name and Address of Beneficial Owner	Shares of Common Stock Beneficially Owned	
	Number	Percentage (1)
<b>Greater than 5% Stockholders:</b>		
21X Investments LLC (2) c/o 21X Investments LLC 1080 Telegraph St B11 Reno NV 89502	6,650,000	47.2
Bruce Galloway (3) c/o Galloway Capital Management, LLC c/o 720 Fifth Avenue, 10 <sup>th</sup> Floor New York, NY 10019	1,317,928	9.4
Galloway Capital Management, LLC (4) 720 Fifth Avenue, 10 <sup>th</sup> Floor New York, NY 10019	1,036,321	7.4
Gary Herman (5) c/o Galloway Capital Management, LLC 720 Fifth Avenue, 10 <sup>th</sup> Floor New York, NY 10019	1,036,321	7.4
Strategic Turnaround Equity Partners LP (6) c/o Stuarts Corporate Services, Ltd. P.O. Box 2510 GT, 4 <sup>th</sup> Floor One Cayman Financial Center 36A Dr. Roy's Drive, Georgetown, Grand Cayman Cayman Islands	1,036,321	7.4
<b>Directors and Executive Officers:</b>		
David A. Brewer (6)	7,909,656	55.8
Mark Frappier(10)	18,056	—
Paul F. DePond (7)	1,936,506	12.2
Gerald W. Rice (8)	575,482	3.9
Rhonda Chicone (9)	561,279	3.8
All directors and executive officers as a group (5 persons)	11,000,979	64.4

- (1) Applicable percentage of ownership is based on 14,075,662 shares of our common stock outstanding as of December 3, 2009, together with applicable options and warrants for such shareholder.
- (2) David Brewer, one of our directors, is the sole member and manager of 21X Investments LLC. Information with respect to the number of shares beneficially owned is based solely on the Schedule 13G filed with the SEC by 21X Investments LLC on June 8, 2007 .
- (3) Of the total of 1,317,928 shares of common stock, 188,941 shares are held by Mr. Galloway's Individual Retirement Account for which Mr. Galloway has sole power to vote and dispose, 22,666 shares are held by Mr. Galloway's children for which he has the sole power to vote and dispose, 70,000 shares are held by RexonGalloway Capital Growth, an investment company in which Mr. Galloway is a 50% owner for which Mr. Galloway retains sole investment and voting discretion, 1,036,321 shares are held by Strategic Turnaround Equity Partners, LP (Cayman) ("STEP"), for which Mr. Galloway has the shared power to vote and dispose. Mr. Galloway is a managing member of Galloway Capital Management, LLC ("GCM"), the general partner of STEP. Mr. Galloway disclaims beneficial ownership of the shares directly beneficially owned by STEP, except to: (i) the indirect interests by virtue of Mr. Galloway being a managing member of GCM, the general partner of STEP; and (ii) the indirect interests of Mr. Galloway by virtue of being a limited partner in STEP. Information with respect to the number of shares beneficially owned in Notes 3 - 5 is based solely on the Schedule 13G/A filed with the SEC by Mr. Galloway, GCM, STEP and Mr. Herman on February 13, 2009.
- (4) Reflects 1,036,321 shares of common stock held by STEP for which GCM has the shared power to vote and dispose.
- (5) Of the total, 1,036,321 shares are held by STEP for which Mr. Herman has the shared power to vote and dispose. Mr. Herman is a managing member of Galloway Capital Management, LLC, the general partner of STEP. Mr. Herman disclaims beneficial ownership of the shares directly beneficially owned by STEP, except: (i) to the indirect interests by virtue of Mr. Herman being a managing member of Galloway Capital Management, LLC, the general partner of STEP; and (ii) the indirect interests of Mr. Herman by virtue of being a limited partner in STEP.

- (6) Includes 6,650,000 shares held by 21X Investments LLC of which Mr. Brewer is the sole member and manager. Includes 98,056 shares of common stock issuable to Mr. Brewer upon exercise of options exercisable within 60 days of December 3, 2009.
- (7) Includes 1,788,891 shares of common stock issuable to Mr. Paul DePond upon exercise of options exercisable within 60 days of December 3, 2009.
- (8) Includes 550,279 shares of common stock issuable to Mr. Rice upon exercise of options exercisable within 60 days of December 3, 2009.
- (9) Includes 550,279 shares of common stock issuable to Ms. Chicone upon exercise of options exercisable within 60 days of December 3, 2009.
- (10) Includes 18,056 shares of common stock issuable to Mr. Frappier upon exercise of options exercisable within 60 days of December 3, 2009.

### Equity Compensation Plan Information

The following table provides information as of September 30, 2009, with respect to shares of our common stock that may be issued under our existing equity compensation plans.

	<b>Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights</b>	<b>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</b>	<b>Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a))</b>
Equity compensation plans approved by security holders (1)	3,578,569	\$ 0.583	556,431
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>3,578,569</b>	<b>\$ 0.583</b>	<b>556,431</b>

(1) Consists of our 1997 Stock Plan and our 2008 Equity Incentive Plan.

### 1997 Stock Plan

The Notify Corporation 1997 Stock Plan (the "Stock Plan") was established in January 1997. The Stock Plan had a term of ten years and expired in January 2007. Under the Stock Plan a total of 3,650,000 shares of our common stock had been reserved for issuance. As of September 30, 2009, options to purchase up to 1,818,000 shares of our common stock were still outstanding under the Stock Plan.

### 2008 Equity Incentive Plan

Our 2008 Equity Incentive Plan (the "Equity Incentive Plan") was established in December 2008. The Equity Incentive Plan has a term of ten years and expires in December 2018. The Equity Incentive Plan provides for the granting of stock options to our employees, officers, consultants and directors. Grants of options to employees and directors under the Equity Incentive Plan vest over three years. Both our Board of Directors and our Compensation Committee have the authority to act as administrator for the Equity Incentive Plan. Under the Equity Incentive Plan, a total of 2,317,000 shares of our common stock has been reserved for issuance. As of September 30, 2009, options to purchase up to 1,750,014 shares of our common stock were outstanding under the Equity Incentive Plan.

## ITEM 13. Certain Relationships and Related Transactions, and Director Independence

### Transactions With Related Persons, Promoters and Certain Control Persons

Not applicable.

## Director Independence

Our common stock is listed on the OTC Bulletin Board inter-dealer quotation system, which does not have director independence requirements. For purposes of determining director independence, we have applied the definition set forth in Rule 5000(a)(19), formerly NASDAQ Marketplace Rule 4200(a)(15), of the listing rules for companies quoted on the NASDAQ Stock Market. Mr. Frappier is the only current member of our Board of Directors that qualifies as an "independent director" under those listing rules.

## ITEM 14. Principal Accountant Fees and Services.

### Summary of Fees

The following table summarizes the approximate aggregate fees billed to us or expected to be billed to us by our independent auditors, L.L. Bradford & Company, LLC, for our 2009 and 2008 fiscal years:

Type of Fees	Fiscal Year 2009	Fiscal Year 2008
Audit Fees (1)	\$ 44,260	\$ 45,675
Audit-Related Fees (2)	—	—
Tax Fees (3)	14,000	8,000
All Other Fees (4)	—	—
Total Fees	<u>\$ 58,260</u>	<u>\$ 53,675</u>

- (1) Audit Fees consist of fees billed for professional services rendered for the audit of our consolidated annual financial statements and review of the interim consolidated financial statements included in quarterly reports and services that are normally provided by L.L. Bradford & Company, LLC in connection with statutory and regulatory filings or engagements.
- (2) Audit-Related Fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements and are not reported under Audit Fees. Fees billed for fiscal 2009 represent consultations in connection with strategic transactions. During our 2009 and 2008 fiscal years there were no such services rendered to us by L.L. Bradford & Company, LLC.
- (3) Tax Fees consist of fees billed for professional services rendered for tax compliance, tax advice and tax planning (domestic and international). These services include assistance regarding federal, state and international tax compliance, acquisitions and international tax planning.
- (4) All Other Fees consist of fees for products and services other than the services reported above. During our 2009 and 2008 fiscal years there were no such services rendered to us by L.L. Bradford & Company, LLC.

### Audit Committee Pre-Approval Policies and Procedures

Our Audit Committee reviewed and pre-approved all audit and non-audit fees for services provided by L.L. Bradford & Company, LLC and has determined that the provision of such services to us during fiscal 2009 is compatible with and did not impair L.L. Bradford & Company, LLC's independence. L.L. Bradford & Company, LLC was engaged to perform the 2008 fiscal year-end audit and fiscal 2009 audit services. It is the practice of the audit committee to consider and approve in advance all auditing and non-auditing services provided to us by our independent auditors in accordance with the applicable requirements of the Securities and Exchange Commission.

## PART IV

### ITEM 15. Exhibits and Financial Statement Schedules.

#### (a) 1. Financial Statements

The following financial statements and related Report of Independent Registered Public Accounting Firm are filed as part of this Annual Report on Form 10-K.

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#### 2. Financial Statement Schedules

Financial statement schedules are omitted because they are either not required or the required information is provided in the consolidated financial statements or notes thereto.

#### 3. Exhibit

- 3.1.1 Amended and Restated Articles of Incorporation of Registrant as filed with the Secretary of State of California on September 2, 1997. (incorporated herein by reference to Exhibit (3.2) to the Registrant's Registration Statement on Form SB-2, Reg. No. 333-23369, filed on March 14, 1997)
- 3.1.2 Certificate of Amendment to the Registrant's Articles of Incorporation as filed with the Secretary of State of California on March 3, 1998. (incorporated herein by reference to Exhibit (3.1.1) to the Registrant's Quarterly Report on Form 10-QSB for the quarterly period ended June 30, 2001, filed on August 14, 2001)
- 3.1.3 Certificate of Amendment to the Registrant's Articles of Incorporation as filed with the Secretary of State of California on July 12, 2001. (incorporated herein by reference to Exhibit (3.1.2) to the Registrant's Quarterly Report on Form 10-QSB for the quarterly period ended June 30, 2001, filed on August 14, 2001)
- 3.1.4 Series A Certificate of Determination, Preferences and Rights as filed with the Secretary of State of California on or about July 12, 2001. (incorporated herein by reference to Exhibit (3.1) to the Registrant's Current Report 8-K, filed on July 23, 2001)
- 3.2 Amended and Restated Bylaws of Registrant. (as amended on April 15, 2009) (incorporated herein by reference to Exhibit (3.2.2) to the Registrant's Current Report on DEF 14A, filed on April 15, 2009)
- 10.5(1) Form of Indemnification Agreement. (incorporated herein by reference to Exhibit (10.5) to the Registrant's Registration Statement on Form SB-2, Reg. No. 333-23369, filed on March 14, 1997)

- 10.6(1) Registrant's 1997 Stock Plan, as amended effective March 26, 2003, and form of stock option agreement. (incorporated by reference to Exhibit (4.1) to the Registrant's Registration Statement on Form S-8 Reg. No 333-108868, filed on September 17, 2003)
- 10.16(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Paul DePond. (incorporated herein by reference to Exhibit (10.16) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.17(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Gerald Rice. (incorporated herein by reference to Exhibit (10.17) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.18(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Rhonda Chicone. (incorporated herein by reference to Exhibit (10.18) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.24 Nonexclusive Technology License Agreement, dated as of November 24, 2003, by and between Registrant and NCR Corporation (incorporated herein by reference to Exhibit (10.24) to the Registrant's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2004, filed on December 22, 2004)
- 10.33 Lease, dated as of October 16, 2008 by and between Registrant and Colbur Tech, LLC. (incorporated herein by reference to Exhibit (10.33) to the Registrant's Annual Report on Form 10-KSB, filed on December 19, 2008)
- 10.35 Lease addendum dated May 7, 2009 between Notify Technology Corporation and Pecten Court Mountain View Associates, LLC. (incorporated herein by reference to Exhibit (10.35) to the Registrant's Current Report on Form 8-K, filed on May 11, 2009)
- 10.36(1) Notify Technology Corporation 2008 Equity Incentive Plan
- 10.37(1) Form of Stock Option Agreement for grants under the Notify Technology Corporation 2008 Equity Incentive Plan
- 10.38(1) Description of the Executive Management Bonus Plan of Notify Technology Corporation (incorporated herein by reference to Exhibit (10.38) to the Registrant's Current Report 8-K, filed on December 23, 2009).
- 14.1 Code of Ethics for Principal Executive and Senior Financial Officers (incorporated herein by reference to Exhibit (14.1) to the Registrant's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2008, filed on December 29, 2008)
- 24.1 Power of Attorney (see page 32).
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- (1) Indicates a management contract or compensatory plan or contract



Notify Technology Corporation

Financial Statements

Years ended September 30, 2009 and 2008

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## Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders  
Notify Technology Corporation

We have audited the accompanying balance sheet of Notify Technology Corporation as of September 30, 2009, and the related statements of operations, shareholders' deficit, and cash flows for the years ended September 30, 2009 and 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes 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 financial statements referred to above present fairly, in all material respects, the financial position of Notify Technology Corporation at September 30, 2009, and the results of its operations and its cash flows for the years ended September 30, 2009 and 2008, in conformity with accounting principles generally accepted in the United States of America.

/s/ L.L. BRADFORD & COMPANY, LLC

Las Vegas, Nevada  
December 23, 2009

Notify Technology Corporation

Balance Sheet

	<u>September 30, 2009</u>	<u>September 30, 2008</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 1,565,447	\$ 1,010,607
Accounts receivable, net allowance for doubtful accounts of \$50,000	810,543	509,735
Other current assets	<u>40,540</u>	<u>39,452</u>
Total current assets	2,416,530	1,559,794
Non-current assets		
Property and equipment, net	247,117	173,224
Lease deposits	<u>15,602</u>	<u>-</u>
Total non-current assets	<u>262,719</u>	<u>173,224</u>
Total assets	<u>\$ 2,679,249</u>	<u>\$ 1,733,018</u>
<b>Liabilities and shareholders' deficit</b>		
Current liabilities:		
Current portion of capital lease obligations	\$ 4,142	\$ 4,445
Accounts payable	75,340	40,045
Accrued payroll and related liabilities	454,946	349,292
Deferred revenue	2,995,906	2,418,235
Other accrued liabilities	<u>140,464</u>	<u>171,108</u>
Total current liabilities	3,670,798	2,983,125
Long term deferred revenue	137,250	
Long term portion of capital lease obligations	<u>6,543</u>	<u>10,685</u>
Total long term liabilities	<u>143,793</u>	<u>10,685</u>
Total liabilities	<u>3,814,591</u>	<u>2,993,810</u>
Commitments and contingencies (Note 8)		
Shareholders' deficit:		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized, no shares outstanding	—	—
Common stock, \$0.001 par value, 30,000,000 shares authorized, 14,075,662 and 14,075,662 shares issued and outstanding on September 30, 2009 and September 30, 2008, respectively	14,076	14,076
Additional paid-in capital	23,442,160	23,387,395
Accumulated deficit	<u>(24,591,578)</u>	<u>(24,662,263)</u>
Total shareholders' deficit	<u>(1,135,342)</u>	<u>(1,260,792)</u>
Total liabilities and shareholders' deficit	<u>\$ 2,679,249</u>	<u>\$ 1,733,018</u>

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

Notify Technology Corporation

Statements of Operations

	Years Ended September 30,	
	2009	2008
<b>Revenues:</b>		
Product revenue	\$ 6,032,257	\$ 4,640,723
<b>Total revenue</b>	<b>6,032,257</b>	<b>4,640,723</b>
<b>Cost of revenues:</b>		
Product cost	8,620	14,160
Royalty cost	144,963	139,595
<b>Total cost of revenues</b>	<b>153,583</b>	<b>153,755</b>
<b>Gross profit</b>	<b>5,878,674</b>	<b>4,486,968</b>
<b>Operating costs and expenses:</b>		
Research and development	1,917,614	1,620,526
Sales and marketing	2,322,315	1,881,552
General and administrative	1,574,958	1,286,112
<b>Total operating costs and expenses</b>	<b>5,814,887</b>	<b>4,788,190</b>
<b>Income (loss) from operations</b>	<b>63,787</b>	<b>(301,222)</b>
<b>Other (income) expenses</b>		
Other (income) expense, net	(6,898)	(13,542)
<b>Total other (income) expense, net</b>	<b>(6,898)</b>	<b>(13,542)</b>
<b>Net income (loss)</b>	<b>\$ 70,685</b>	<b>\$ (287,680)</b>
<b>Basic net income (loss) per share</b>	<b>\$ 0.01</b>	<b>\$ (0.02)</b>
<b>Weighted-average shares used in computing basic net income (loss) per share</b>	<b>14,070,662</b>	<b>14,070,662</b>
<b>Diluted net income (loss) per share</b>	<b>\$ 0.00</b>	<b>\$ (0.02)</b>
<b>Weighted-average shares used in computing diluted net loss per share</b>	<b>14,754,252</b>	<b>14,070,662</b>

*The accompanying notes are an integral part of these financial statements.*

Notify Technology Corporation

Statements of Shareholders' Deficit

	Convertible Redeemable Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Shareholders' Deficit
	Shares	Amount	Shares	Amount			
Balance at September 30, 2007	—	\$ —	13,968,995	\$ 13,969	\$ 23,254,759	\$ (24,374,583)	\$ (1,005,855)
Option vesting expense					4,810		4,810
Net loss and comprehensive net loss						(287,680)	(287,680)
Proceeds from exercise of options			106,667	107	27,827		27,934
Balance at September 30, 2008	—	\$ —	14,075,662	\$ 14,076	23,387,396	\$ (24,662,263)	\$ (1,260,791)
Option vesting expense					54,765		54,765
Net income and comprehensive net income						70,685	70,684
Balance at September 30, 2009	—	\$ —	14,075,662	\$ 14,076	\$ 23,442,161	\$ (24,591,578)	\$ (1,135,342)

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

Notify Technology Corporation

Statements of Cash Flows

	Years Ended September 30,	
	2009	2008
<b>Operating activities</b>		
Net income (loss)	\$ 70,685	\$ (287,680)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	93,127	59,953
Option vesting expense	54,765	4,810
Changes in operating assets and liabilities:		
Accounts receivable, net	(300,808)	78,560
Other assets	(16,689)	12,240
Accounts payable	35,295	8,130
Accrued liabilities	75,010	116,995
Deferred revenue	714,921	291,717
Net cash provided by (used in) operating activities	<u>726,306</u>	<u>284,725</u>
<b>Investing activities</b>		
Expenditures for property and equipment	(167,021)	(134,195)
Proceeds from sale of fixed assets	—	—
Net cash used in investing activities	<u>(167,021)</u>	<u>(134,195)</u>
<b>Financing activities</b>		
Proceeds from exercise of options	—	27,934
Payments on capital leases	(4,445)	(7,632)
Net cash provided by (used in) financing activities	<u>(4,445)</u>	<u>20,302</u>
Net increase (decrease) in cash and cash equivalents	554,840	170,832
Cash and cash equivalents at beginning of year	1,010,607	839,775
Cash and cash equivalents at end of year	<u>\$ 1,565,447</u>	<u>\$ 1,010,607</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 812	\$ 1,923
Cash paid for income taxes	\$ 850	\$ 300

*The accompanying notes are an integral part of these financial statements.*

## **1. Business and Basis of Presentation**

Notify Technology Corporation (the Company or Notify), incorporated in California in 1994, is a software developer of enterprise mobility solutions for most wireless handheld devices including the RIM BlackBerry, Apple iPhone, Palm based products and Windows Mobile based products on a variety of email platforms including various IMAP4 solutions as well as Novell GroupWise and Microsoft Exchange.

The Company has incurred net losses since inception and may incur net losses and negative cash flow from operations for at least the next one or two years. The Company had net income for the year ended September 30, 2009 of \$70,685 and a net loss \$287,680 for the year ended September 30, 2008. The Company has an accumulated deficit of \$24.6 million as of September 30, 2009. During fiscal 2009, the Company financed its operations through the sale of its products and existing cash balances.

The Company chose to replace its historical wireline products starting in fiscal 2001 and although it still received some revenue from its legacy wireline business in fiscal 2007, it currently focuses all its efforts on its wireless software products by researching and developing new products, enhancing its existing NotifyLink product family and marketing and selling the NotifyLink and NotifySync product lines. In fiscal 2009, the Company paid all of its operating expenses based on sales of its NotifyLink and NotifySync product lines. The success of the Company's business operations will depend upon the continued favorable market acceptance of its wireless software products.

If additional funds are raised through the issuance of equity or debt securities, these securities could have rights that are senior to existing shareholders and could contain covenants that would restrict operations. Any additional financing may not be available in amounts or on terms acceptable to the Company, if at all.

## **2. Summary of Significant Accounting Policies**

### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the accompanying financial statements and notes thereto. Actual results could differ from those estimates.

### **Cash and Cash Equivalents**

The Company considers all highly liquid, temporary investments with an original maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents are deposited in demand and money market accounts in financial institutions in the United States.

**Accounts Receivable/ Allowance for Doubtful Accounts**

Accounts receivable are stated at net realizable value. Uncollectible receivables are recorded as bad debt expense when all efforts to collect them have been exhausted and recoveries are recognized when they are received. Historically, the bad debts have been insignificant and the allowance for bad debt approximates the average bad debt expense.

**Inventories**

The Company's current business does not require inventory and it no longer has any remaining inventory of its legacy products. If inventories were present, they would be stated at the lower of cost or market on a first-in, first-out basis. At September 30, 2009, the value of inventory was zero.

**Property and Equipment**

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the following estimated useful lives of the assets: five years for furniture and office equipment and three years for software and computer equipment. Leasehold improvements and assets under capital leases are amortized by the straight-line method over the shorter of the lease term or the estimated useful lives of such assets. Upon retirement or sale, the cost and related accumulated depreciation are removed from the accounts and any related income or loss is reflected in the statement of operations. Repairs and maintenance are expensed as incurred.

**Long-Lived Assets**

The Company monitors the recoverability of long-lived assets based on estimated use factors such as future asset utilization, business climate and future undiscounted cash flows expected to result from the use of the related assets or realized upon sale. The Company's policy is to write down assets to their net recoverable amounts, which are determined based on either discounted future net cash flows or appraised values, in the period when it is determined that the carrying amount of the asset is not likely to be recoverable.

**Income Taxes**

The Company accounts for income taxes under the liability method. The estimated future tax effect of differences between the basis in assets and liabilities for tax and accounting purposes is accounted for as deferred taxes. A valuation allowance has been established to reduce deferred tax assets as it is more likely than not that all, or some portion, of such deferred tax assets would not be realized. A full allowance against deferred tax assets is provided.

**Advertising Costs**

The Company expenses the costs of producing advertisements at the time production occurs. Advertising expense incurred for the twelve months ended September 30, 2009 and 2008, was \$732 and zero, respectively. Trade show expense incurred for the twelve months ended September 30, 2009 and 2008, was \$38,221 and \$42,239, respectively.

## **Revenue Recognition**

The Company recognizes software license agreements when persuasive evidence of an agreement exists, delivery of the product has occurred, the license fee is fixed or determinable and collection is probable. The Company's license agreements take two basic forms. The first form of agreement is essentially a subscription agreement that is used in connection with the Company's hosting arrangement where the Company provides the software combined with hosting services from a hardened site owned and managed by it. The agreement generally has a fixed term and the license revenue is recognized ratably over the term of each service contract. The second form of agreement involves the purchase of a license and a service agreement based on the Vendor Supplied Objective Evidence ("VSOE") where only the service agreement is renewed each year. The Company recognizes the license portion at the point of sale for those sales where VSOE has been established and the service portion ratably over the term of the service contract. For those contracts where VSOE has not been established, the revenue of the entire contract is recognized ratably over the term of the contract. The Company's sales process provides for an optional trial period prior to the agreement to purchase and no revenue is recognized during that trial period.

The Company recognizes revenue when the title and risk of loss have passed to the customer, there is persuasive evidence of an arrangement, delivery of the product has occurred or services have been rendered, the sales price is fixed or determinable and collection is probable. Installation, when required, is commonly completed prior to an agreement to facilitate a trial of the product. Technical assistance is available during the sales process and is unrelated to the service component portion of the final arrangement. Revenue related to installation is recognized when the agreement is signed and the contract period has commenced.

Service revenue is recognized on a straight-line basis over the period of the service agreement.

Deferred revenue relates to products where a sales contract has been executed and payment has been received but the obligation to provide services is being recognized over the contractual term of the license. The balance in deferred revenue represents the aggregate unrecognized value of active contracts that will be taken to income in future periods.

## **Research and Development**

Based on the Company's software development process, the time period between the development of new software features and the release of the product is short and capitalization of internal development costs has not been material to date.

## **Concentration of Credit Risk**

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash and cash equivalents and trade accounts receivable. Cash and cash equivalents are defined as cash and cash equivalents held with financial institutions that exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The Company performs ongoing credit evaluations and generally requires no collateral. The Company maintains reserves for credit losses, and such losses have been within management's expectations. As of September 30, 2009, one customer represented more than 10% of accounts receivable. The value of most customer accounts represent a small portion of receivables but from time to time we make larger individual customer sales; normally annual renewals of larger customers. Revenue from one customer accounted for 6% of total revenues for the fiscal year ended September 30, 2009.

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

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value due to their relatively short maturities. Based upon borrowing rates currently available to the Company for capital leases with similar terms, the carrying value of its capital lease obligations approximate fair value.

### **Stock-Based Compensation**

The Company accounts for all compensation related to stock, options or warrants using a fair value based method whereby compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. The Company uses the Black-Scholes pricing model to calculate the fair value of options and warrants issued to both employees and non-employees. Stock issued for compensation is valued using the market price of the stock on the date of the related agreement.

The Company recognized stock based employee compensation in fiscal 2009 and recorded a non-cash expense of \$54,765. 1,775,014 options were granted in fiscal 2009. The Notify Corporation 1997 Stock Plan option plan expired in January 2007 and the shareholders approved the Notify Technology Corporation 2008 Equity Incentive Plan in May 2009.

### **Net Income (Loss) Per Share**

Net income (loss) per common share is computed by dividing net loss available to common stockholders by the weighted average number of shares outstanding during the period.

Options to purchase 3,578,569 were outstanding on September 30, 2009 and were included in the computation of diluted net income. 2,773,000 options were outstanding on September 30, 2008, but were not included in the computation of diluted net loss per share as the effect would be antidilutive.

### **Recent Accounting Pronouncements**

On July 1, 2009, the Financial Accounting Standards Board (FASB) officially launched the FASB Accounting Standards Codification (ASC) 105 — *Generally Accepted Accounting Principles*, which established the FASB Accounting Standards Codification ("the Codification"), as the single official source of authoritative, nongovernmental, U.S. GAAP, in addition to guidance issued by the Securities and Exchange Commission. The Codification is designed to simplify U.S. GAAP into a single, topically ordered structure. All guidance contained in the Codification carries an equal level of authority. The Codification is effective for interim and annual periods ending after September 15, 2009. Accordingly, the Company refers to the Codification in respect of the appropriate accounting standards throughout this document as "FASB ASC". Implementation of the Codification did not have any impact on the Company's consolidated financial statements.

In May 2009, the FASB issued FASB ASC 855, "Subsequent Events". This Statement addresses accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or available to be issued. FASB ASC 855 requires disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, the date issued or date available to be issued. The Company adopted this Statement in the fourth fiscal quarter of 2009.

In December 2007, the FASB issued an update to FASB ASC 805, "Business Combinations" which establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree, and the goodwill acquired. This update also establishes disclosure requirements to enable the evaluation of the nature and financial effects of the business combination. This update is effective for the Company with respect to business combinations for which the acquisition date is on or after January 1, 2009. The Company adopted this update in the second quarter of 2009 without significant financial impact.

In December 2007, the FASB issued an update to FASB ASC 810, "Consolidation", which establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent's ownership interest, and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. ASC 810 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of noncontrolling owners. This update is effective for the Company as of January 1, 2009. The Company adopted this update in January 2009 without significant impact on the consolidated financial position, results of operations, and disclosures.

In September 2009, the FASB issued Accounting Standards Update No. 2009-13 (ASU 2009-13), Multiple-Deliverable Revenue Arrangements which updates ASC Topic 605-25, Multiple Elements Arrangements (formerly EITF 00-21), of the FASB codification. ASU 2009-13 provides new guidance on how to determine if an arrangement involving multiple deliverables contains more than one unit of accounting, and if so allows companies to allocate arrangement considerations in a manner more consistent with the economics of the transaction. ASU 2009-13 is effective for the Company, prospectively, for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010; early application is permitted. The Company is currently evaluating the impact of adopting ASU 2009-13 on its financial statements.

### 3. Property and Equipment

Property and equipment consist of the following:

	September 30, 2009	September 30, 2008
Furniture and office equipment	\$ 535,011	\$ 452,671
Software	76,228	103,626
Leasehold improvements	—	2,246
	611,239	558,543
Less accumulated depreciation and amortization	(364,122)	(385,319)
	<u>\$ 247,117</u>	<u>\$ 173,224</u>

Property and equipment includes \$21,157 of office equipment under capital lease with accumulated amortization of \$10,361 and \$6,028 at September 30, 2009 and 2008, respectively.

Depreciation and amortization expense was \$93,127 and \$59,953 for the years ended September 30, 2009 and 2008, respectively.

### 4. Capital Lease Obligations

During the year ended September 30, 2006, the Company entered into one capital lease for office equipment totaling \$6,157 with principal and interest (5.8%) due monthly. During the year ended September 30, 2007, the Company entered into one capital lease totaling \$15,000 with principal and interest (5.0%) due monthly.

Future minimum lease payments under the lease are as follows:

For the year ending September 30,	
2010	\$ 4,664
2011	3,480
2012	3,480
Total minimum lease payments	11,624
Less: amount representing interest	(939)
Present value of net minimum lease payments	10,685
Less: current portion	(4,142)
Long term portion	<u>\$ 6,543</u>

### 5. Guarantees

#### *Indemnification Agreements*

The Company enters into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, generally their business partners or customers, in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Company's products. The term of these indemnification agreements is generally perpetual anytime after the execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal.

The Company has entered into indemnification agreements with its directors and officers that may require the Company: to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct of a culpable nature; to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified; and to obtain directors' and officers' insurance if available on reasonable terms, which the Company currently has in place.

#### *Product Warranty*

The Company warrants its products to current paid-up customers and makes available for download service update releases that contain the most up-to-date version of the Company's products. These software updates are continually maintained and released when available. As such, the Company does not maintain a separate warranty reserve but expenses the cost to create and post any maintenance release as a part of normal operations.

### **6. Commitments and Contingencies**

The Company currently occupies two facilities under operating leases. The San Jose, California facility lease expires in May 2012 and the Canfield, Ohio facility lease expires in October 2012.

Future minimum lease payments are approximately as follows:

Year ending September 30, 2010	\$ 218,175
Year ending September 30, 2011	214,170
Year ending September 30, 2012	181,997
Year ending September 30, 2013	4,777
	<u>\$ 619,119</u>

Facility rent expense totaled approximately \$186,000 and \$145,000 for the years ended September 30, 2009 and 2008, respectively.

In November 2003, NCR Corporation and Notify Technology Corporation entered into a non-exclusive license agreement that allows the Company to offer certain product features on its Enterprise Mobility Solution that are covered by a patent held by NCR. This agreement requires that a royalty payment be made to NCR based on the revenue from any NotifyLink product that is sold that uses the technology covered by the patent. Payments under this agreement were \$110,981 and \$123,645 during the fiscal years 2009 and 2008, respectively. The agreement had a cap of \$500,000 of total royalty payable after which Notify would hold a fully paid-up license to utilize the NCR technology. We reached that cap in July 2009 and no more royalties are payable to NCR under the 2003 agreement.

### **7. Shareholders' Deficit**

#### **Preferred Stock**

The Board of Directors has the authority, without any further vote or action by the shareholders, to provide for the issuance of 5,000,000 shares of preferred stock in one or more series with such designation, rights, preferences, and limitations as the Board of Directors may determine, including the consideration to be received, the number of shares comprising each series, dividend rates, redemption provisions, liquidation preferences, redemption and fund provisions, conversion rights, and voting rights, all without the approval of the holders of common stock.

## **Convertible Redeemable Preferred Stock**

In July 2001, the Company's shareholders authorized and the Company completed an offering of Series A convertible redeemable preferred stock (Series A preferred stock) to a group of private investors. In connection with the offering, the Company issued 501,000 shares of Series A preferred stock at \$10 per share and issued warrants to purchase 1,753,000 shares of common stock for consideration of \$4.2 million, net of issuance costs. The Company has designated a total of 900,000 shares as Series A preferred stock.

Holders of our outstanding Series A preferred stock had the right to require the Company to redeem any unconverted shares of Series A preferred stock at any time and from time to time during the period from July 20, 2003 to July 25, 2004. The per share redemption price was \$10.00 plus any accrued dividends. The holders of Series A preferred stock had the option to receive the redemption price in cash or in shares of our common stock, but the Company was not obligated to pay the redemption in cash unless the Company's board of directors unanimously approved such payment in cash. If all holders of outstanding Series A preferred stock elected to redeem in cash, the aggregate redemption price would have totaled \$4,610,000. The holders of the Company's Series A preferred stock chose to exercise their right of redemption in the form of common shares. The outstanding Series A preferred shares were redeemed at an effective rate of 20 shares of common stock for each share of Series A preferred stock. The redemption date was July 20, 2004 at which time 461,000 Series A preferred shares were presented for redemption and 9,220,000 shares of common stock were subsequently issued on August 31, 2004.

In connection with the offering of Series A preferred stock, the Company issued options to purchase 9.2685 units at a price per unit of \$100,000 to the placement agent. Each unit consisted of 10,000 shares of Series A preferred stock convertible into an aggregate of 100,000 shares of common stock with a warrant to purchase 35,000 shares of common stock. The options to purchase units expired on July 21, 2008 without any options being exercised. At September 30, 2008, none of these options or warrants were outstanding.

Additionally, on May 15, 2001 the Company also issued a seven year warrant to purchase 118,151 shares of common stock at an exercise price of \$1.00 per share to an investment fund in connection with the investment funds commitment to purchase Series A preferred stock for the amount of the difference between \$5 million and the aggregate amount of money invested by all other investors in the financing. This warrant expired on May 16, 2008 without being exercised.

35,000 and 5,000 shares of Series A preferred stock were converted to 350,000 and 50,000 shares of common stock in fiscal 2002 and 2003, respectively.

## Common Stock

The following table summarizes shares of common stock reserved for future issuance by the Company:

	<u>September 30, 2009</u>
1997 Stock Option Plan	1,818,000
2008 Equity Incentive Plan	2,317,000
	<u>4,135,000</u>

## Warrants to Purchase Common Stock

At September 30, 2009, the Company had no warrants outstanding:

- Warrants to purchase 1,753,500 and 118,151 shares of common stock at an exercise price of \$1.00 were issued in connection with the July 2001 private placement to the placement agent and an investment fund, respectively. The warrants to purchase 1,753,500 shares of common stock expired in July 2008 without any warrants being exercised and the warrant to purchase 118,151 shares of common stock expired in May 2008 without exercise.

## 1997 Stock Option Plan

In January 1997, the Company adopted the 1997 Stock Plan (the Plan), which provided for the granting of stock options to employees, officers, consultants, and directors of the Company. The Plan expired in January 2007. Stock options were granted at fair market value on the date of grant with terms of up to ten years. Under the Plan, a total of 3,474,662 shares of the Company's common stock were reserved for issuance. Under the terms of these option grants, the options commence vesting upon the first anniversary of the date of employment and continue to vest ratably over the remainder of the four-year vesting period. Certain grants of options to employees after the initial grant of options to employees vest over three years. Certain grants to members of the Company's Board of Directors in compensation for their services vest over their current term of office of one year. The following table summarizes stock option activity:

	Shares Available for Grant	Options Outstanding	
		Number of Shares	Weighted- Average Price
Balance at September 30, 2007	—	2,928,000	\$ 1.196
Granted	—	—	N/A
Cancelled	—	(48,333)	\$ 0.285
Exercised	—	(106,667)	\$ 0.262
Balance at September 30, 2008	—	2,773,000	\$ 1.196
Granted	—	—	N/A
Cancelled	—	(55,000)	\$ 2.491
Exchanged	—	(900,000)	\$ 1.600
Exercised	—	—	N/A
Balance at September 30, 2009	—	1,818,000	\$ 1.032

## 2008 Equity Incentive Plan

In May 2009, the Company adopted the 2008 Equity Incentive Plan (the New Plan), which provided for the granting of stock options to employees, officers, consultants, and directors of the Company. Stock options were granted at fair market value on the date of grant with terms of up to ten years. Under the Plan, a total of 2,317,000 shares of the Company's common stock were reserved for issuance. Grants of options to employees and directors vest over three years. The following table summarizes stock option activity:

	<u>Options Outstanding</u>		
	<u>Shares Available For Grant</u>	<u>Number of Shares</u>	<u>Weighted-Average Price</u>
Balance at September 30, 2008		—	—
Authorized	2,317,000	—	N/A
Granted	(1,775,014)	1,775,014	\$ 0.142
Cancelled	14,445	(14,445)	\$ 0.140
Exercised	—	—	N/A
Balance at September 30, 2009	<u>556,431</u>	<u>1,760,564</u>	<u>\$ 0.142</u>

The following table summarizes outstanding and exercisable options at September 30, 2009:

<u>Exercise Prices</u>	<u>Options Outstanding</u>			<u>Options Exercisable</u>	
	<u>Number of Options Outstanding</u>	<u>Weighted-Average Remaining Life in Years</u>	<u>Weighted-Average Exercise Prices</u>	<u>Number of Options Exercisable</u>	<u>Weighted-Average Exercise Prices</u>
\$0.140	1,735,569	9.20	\$ 0.140	437,502	\$ 0.140
\$0.200 – \$0.280	1,280,000	4.42	\$ 0.253	1,255,000	\$ 0.252
\$0.320 – \$0.490	338,000	2.06	\$ 0.332	338,000	\$ 0.332
\$2.375 – \$3.875	87,000	1.08	\$ 2.983	87,000	\$ 2.983
\$6.125 – \$7.656	13,000	0.20	\$ 6.317	13,000	\$ 6.317
\$8.813	125,000	0.40	\$ 8.813	125,000	\$ 8.813
	<u>3,578,569</u>	3.85	\$ 0.591	<u>2,255,502</u>	\$ 1.619

## 8. Income Taxes

Due to historical operating losses, there is no provision for income taxes for fiscal 2009 or 2008. The expected statutory tax benefit of 34% is offset by the inability to recognize an income tax benefit from the net operating losses.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets for federal and state income taxes are as follows:

	<b>Year Ended September 30, 2009</b>
<b>Deferred tax assets:</b>	
Net operating loss carryforwards	\$ 206,600
Research credit carryforwards	329,800
Other temporary differences	3,500
<b>Total deferred tax assets</b>	<b>539,900</b>
<b>Valuation allowance</b>	<b>(539,000)</b>
<b>Net deferred tax assets</b>	<b>\$ —</b>

Realization of deferred tax assets is dependent on future earnings, if any, the timing and amount of which are uncertain. Accordingly, a valuation allowance in an amount equal to the net deferred tax asset has been established to reflect these uncertainties.

As of September 30, 2008, the Company had net operating loss carryforwards of approximately \$607,000 and \$440,000 for Federal and California tax purposes, which will expire in the years 2011 through 2027. As of September 30, 2008, the Company also had research and development tax credit carryforwards for federal and California tax purposes of approximately \$329,800 and \$215,000, respectively. The credits will expire in the years 2016 through 2027, if not utilized. Utilization of the net operating losses and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and tax credit carryforwards before full utilization.

### **9. Industry Segment, Customer, and Geographic Information**

The Company has one operating segment by which management evaluates performance. The Company sells its products primarily within the United States and Canada to business customers with limited sales in other countries.

All of the Company's long-lived assets are located in the United States.

### **10. Subsequent Events**

There were no subsequent events that occurred between September 30, 2009 and the date of this filing.

## EXHIBIT INDEX

- 3.1.1 Amended and Restated Articles of Incorporation of Registrant as filed with the Secretary of State of California on September 2, 1997. (incorporated herein by reference to Exhibit (3.2) to the Registrant's Registration Statement on Form SB-2, Reg. No. 333-23369, filed on March 14, 1997)
- 3.1.2 Certificate of Amendment to the Registrant's Articles of Incorporation as filed with the Secretary of State of California on March 3, 1998. (incorporated herein by reference to Exhibit (3.1.1) to the Registrant's Quarterly Report on Form 10-QSB for the quarterly period ended June 30, 2001, filed on August 14, 2001)
- 3.1.3 Certificate of Amendment to the Registrant's Articles of Incorporation as filed with the Secretary of State of California on July 12, 2001. (incorporated herein by reference to Exhibit (3.1.2) to the Registrant's Quarterly Report on Form 10-QSB for the quarterly period ended June 30, 2001, filed on August 14, 2001)
- 3.1.4 Series A Certificate of Determination, Preferences and Rights was filed with the Secretary of the State of California on or about July 12, 2001 (incorporated herein by reference to Exhibit (3.1) to the Registrant's Current Report on Form 8-K, filed on July 23, 2001)
- 3.2 Amended and Restated Bylaws of Registrant. (as amended on April 15, 2009) (incorporated herein by reference to Exhibit (3.2.2) to the Registrant's Current Report on DEF 14A, filed on April 15, 2009)
- 10.5(1) Form of Indemnification Agreement. (incorporated herein by reference to Exhibit (10.5) to the Registrant's Registration Statement on Form SB-2, Reg. No. 333-23369, filed on March 14, 1997)
- 10.6(1) Registrant's 1997 Stock Plan, as amended effective March 26, 2003, and form of stock option agreement. (incorporated by reference to Exhibit (4.1) to the Registrant's Registration Statement on Form S-8 Reg. No 333-108868, filed on September 17, 2003)
- 10.16(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Paul DePond. (incorporated herein by reference to Exhibit (10.16) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.17(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Gerald Rice. (incorporated herein by reference to Exhibit (10.17) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.18(1) Amended and Restated Employment Agreement dated as of October 31, 2007 between Registrant and Rhonda Chicone. (incorporated herein by reference to Exhibit (10.18) to the Registrant's Current Report 8-K, filed on December 21, 2007)
- 10.24 Nonexclusive Technology License Agreement, dated as of November 24, 2003, by and between Registrant and NCR Corporation (incorporated herein by reference to Exhibit (10.24) to the Registrant's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2004, filed on December 22, 2004)
- 10.34 Lease, dated as of October 16, 2008 by and between Registrant and Colbur Tech, LLC. (incorporated herein by reference to Exhibit (10.33) to the Registrant's Annual Report on Form 10-KSB, filed on December 19, 2008)
- 10.36(1) Notify Technology Corporation 2008 Equity Incentive Plan
- 10.37(1) Form of Stock Option Agreement for grants under the Notify Technology Corporation 2008 Equity Incentive Plan
- 10.38(1) Description of the Executive Management Bonus Plan of Notify Technology Corporation (incorporated herein by reference to Exhibit (10.38) to the Registrant's Current Report 8-K, filed on December 23, 2009).

- 10.34 Lease addendum dated May 7, 2009 between Notify Technology Corporation and Pecten Court Mountain View Associates, LLC. (incorporated herein by reference to Exhibit (10.35) to the Registrant's Current Report on Form 8-K, filed on May 11, 2009)
- 14.1 Code of Ethics for Principal Executive and Senior Financial Officers (incorporated herein by reference to Exhibit (14.1) to the Registrant's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2008, filed on December 29, 2008)
- 24.1 Power of Attorney (see page 32).
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- (1) Indicates a management contract or compensatory plan or contract.

**NOTIFY TECHNOLOGY CORPORATION**

**2008 EQUITY INCENTIVE PLAN**

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**NOTIFY TECHNOLOGY CORPORATION  
2008 EQUITY INCENTIVE PLAN**

**ARTICLE 1  
PURPOSE**

**1.1 General .** The purpose of the Notify Technology Corporation 2008 Equity Incentive Plan (the “Plan”) is to promote the success, and enhance the value, of Notify Technology Corporation (the “Company”), by linking the personal interests of employees, officers, non-employee directors and consultants of the Company or any Affiliate (as defined below) to those of Company shareholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, non-employee directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company’s operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, non-employee directors and consultants of the Company and its Affiliates.

**ARTICLE 2  
DEFINITIONS**

**2.1 Definitions .** When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

“Affiliate” means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

“Award” means any Option, Restricted Stock Award, Performance Share, or any other right or interest relating to Stock or cash, granted to a Participant under the Plan.

“Award Certificate” means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan. The Committee may provide for the use of electronic, internet or other non-paper Award Certificates, and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by a Participant.

“Board” means the Board of Directors of the Company.

“Change in Control” means and includes the occurrence of any one of the following events:

(i) individuals who, on the Effective Date, constitute the Board (the “Incumbent Directors”) cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors (“Election Contest”) or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board (“Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any person is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of either (A) 50% or more of the then-outstanding shares of common stock of the Company (“Company Common Stock”) or (B) securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities eligible to vote for the election of directors (the “Company Voting Securities”); provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a “Reorganization”), or the sale or other disposition of all or substantially all of the Company’s assets (a “Sale”) or the acquisition of assets or stock of another corporation (an “Acquisition”), unless immediately following such Reorganization, Sale or Acquisition:

(A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets or stock either directly or through one or more subsidiaries the (“Surviving Corporation”) in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and

(B) no person (other than (x) the Company or any Subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 50% or more of the total common stock or 50% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board's approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-Qualifying Transaction"); or

(iv) approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

"Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

"Committee" means the committee of the Board described in Article 4.

"Company" means Notify Technology Corporation, a California corporation, or any successor corporation.

"Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee, officer, consultant or non-employee director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company prior to its commencement; provided, however, that for purposes of Incentive Stock Options, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

"Covered Employee" means a covered employee as defined in Code Section 162(m)(3).

"Disability" or "Disabled" has the same meaning as provided in the long-term disability plan or policy maintained by the Company or if applicable, most recently maintained, by the Company or if applicable, an Affiliate, for the Participant, whether or not such Participant actually receives disability benefits under such plan or policy. If no long-term disability plan or policy was ever maintained on behalf of Participant or if the determination of Disability relates to an Incentive Stock Option, Disability means Permanent and Total Disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Awards that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, Disability has the meaning given such term in Section 409A of the Code. In the event of a dispute, the determination whether a Participant is Disabled will be made by the Committee and may be supported by the advice of a physician competent in the area to which such Disability relates.

“Effective Date” has the meaning assigned such term in Section 3.1.

“Eligible Participant” means an employee, officer, consultant or non-employee director of the Company or any Affiliate.

“Exchange” means the New York Stock Exchange or any other national securities exchange or national market system on which the Stock may from time to time be listed or traded.

“Fair Market Value” of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the closing sales price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or, if more than one Exchange, the Exchange with the greatest volume of trading in the Stock) for such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by Bloomberg, L.P. quotation services or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by Bloomberg, L.P. quotation services or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

“Grant Date” of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

“Incentive Stock Option” means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

“Non-Employee Director” means a director of the Company who is not a common law employee of the Company or an Affiliate.

“Nonstatutory Stock Option” means an Option that is not an Incentive Stock Option.

“Option” means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

“Parent” means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.

“Participant” means a person who, as an employee, officer, non-employee director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term “Participant” refers to a beneficiary designated pursuant to Section 10.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.

“Performance Share” means any right granted to a Participant under Article 8 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.

“Person” means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

“Plan” means the Notify Technology Corporation 2008 Equity Incentive Plan, as amended from time to time.

“Qualified Performance-Based Award” means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 10.8(b), or (ii) an Option.

“Qualified Business Criteria” means one or more of the Business Criteria listed in Section 10.8(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.

“Restricted Stock Award” means Stock granted to a Participant under Article 9 that is subject to certain restrictions and to risk of forfeiture.

“Section 162(m) Exemption” means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

“Shares” means shares of the Company’s Stock. If there has been an adjustment or substitution pursuant to Section 11.1, the term “Shares” shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 11.1.

“Stock” means the \$0.001 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 11.

“Subsidiary” means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

“ 1933 Act ” means the Securities Act of 1933, as amended from time to time.

“ 1934 Act ” means the Securities Exchange Act of 1934, as amended from time to time.

### ARTICLE 3 TERM OF PLAN

**3.1 Effective Date .** The Plan was approved by the Board on December 17, 2008 (“the Effective Date”), subject to the approval by a majority of the shareholders present and entitled to vote thereon at the April 28, 2009 Annual Meeting of Shareholders, and is continued in effect until terminated, amended or suspended as permitted under Article 12 hereof.

**3.2 Termination of Plan .** The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination; such outstanding Awards shall continue to be governed by the terms and conditions of this Plan and the applicable Award Certificates. No Incentive Stock Options may be granted more than ten years after the earlier of (a) adoption of this Plan by the Board, or (b) the Effective Date.

### ARTICLE 4 ADMINISTRATION

**4.1 Committee .** The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and “outside directors” (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the fact that a Committee member fails to qualify under either of the foregoing requirements or fails to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

**4.2 Action and Interpretations by the Committee .** For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee regarding the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

**4.3 Authority of Committee .** Except as provided below, the Committee has the exclusive power, authority and discretion to:

- (a) Grant Awards;
- (b) Designate Participants;
- (c) Determine the type or types of Awards to be granted to each Participant;
- (d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;
- (e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, base price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;
- (f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 10, based in each case on such considerations as the Committee in its sole discretion determines;
- (g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;
- (i) Decide all other matters that must be determined in connection with an Award;
- (j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;
- (k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;

(l) Amend the Plan or any Award Certificate as provided herein; and

(m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the above, the Board may, by resolution, expressly delegate to a special committee, consisting of one or more directors who may but need not be officers of the Company, the authority, within specified parameters, to (i) designate employees and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the 1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

**4.4 Award Certificates .** Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

## **ARTICLE 5 SHARES SUBJECT TO THE PLAN**

**5.1 Number of Shares .** Subject to adjustment as provided in Sections 5.2 and 11.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 2,317,000.

**5.2 Share Counting .** Shares covered by an Award shall be subtracted from the Plan share reserve as of the date of grant, but shall be added back to the Plan share reserve in accordance with this Section 5.2.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued or forfeited Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) Substitute Awards granted pursuant to Section 10.11 of the Plan shall not count against the Shares otherwise available for issuance under the Plan under Section 5.1.

**5.3 Stock Distributed .** Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

**ARTICLE 6**  
**ELIGIBILITY**

**6.1 General** . Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code. Eligible Participants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an “eligible issuer of service recipient stock” within the meaning of the regulations under Code Section 409A.

**ARTICLE 7**  
**STOCK OPTIONS**

**7.1 General** . The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) Exercise Price . The exercise price per Share under an Option shall be determined by the Committee; provided that the exercise price for any Option (other than an Option issued as a substitute Award pursuant to Section 10.11) shall not be less than the Fair Market Value as of the Grant Date.

(b) Time and Conditions of Exercise . The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(d). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested.

(c) Payment . The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including “cashless exercise” arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants.

(d) Exercise Term . Except for Nonstatutory Options granted to Participants outside the United States, no Option granted under the Plan shall be exercisable for more than ten years from the Grant Date.

(e) No Deferral Feature . No Option shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the exercise or disposition of the Option.

**7.2 Incentive Stock Options** . The terms of any Incentive Stock Options granted under the Plan must comply with the requirements of Section 422 of the Code. If all of the requirements of Section 422 of the Code are not met, the Option shall automatically become a Nonstatutory Stock Option.

## ARTICLE 8 PERFORMANCE SHARES

**8.1 Grant of Performance Shares .** The Committee is authorized to grant Performance Shares to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Shares granted to each Participant and to designate the provisions of such Performance Shares as provided in Section 4.3. All Performance Shares shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Shares are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

**8.2 Performance Goals .** The Committee may establish performance goals for Performance Shares which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to an Award of Performance Shares that is intended to be a Qualified Performance-Based Award.

**8.3 Right to Payment .** The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent value in cash or other property, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Shares in its sole discretion which, depending on the extent to which they are met, will determine the number of the Performance Shares that will be earned by the Participant.

**8.4 Other Terms .** Performance Shares may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate.

## ARTICLE 9 RESTRICTED STOCK

**9.1 Grant of Restricted Stock.** Subject to the terms and conditions of this Article 9, the Committee is authorized to make Awards of Restricted Stock to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award, and may include without limitation first refusal rights, repurchase rights, co-sale rights, and drag-along rights.

**9.2 Issuance and Restrictions** . Restricted Stock shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). Subject to the remaining terms and conditions of the Plan, these restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a shareholder with respect to the Restricted Stock.

**9.3 Forfeiture** . Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate, subject to the terms and conditions of the Plan, that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of terminations resulting from specified causes, including, but not limited to, death, Disability, or for the convenience or in the best interests of the Company.

**9.4 Delivery of Restricted Stock** . Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

## **ARTICLE 10 PROVISIONS APPLICABLE TO AWARDS**

**10.1 Stand-Alone and Tandem Awards** . Awards granted under the Plan may, in the sole discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

**10.2 Term of Award** . The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option exceed a period of ten years from its Grant Date.

**10.3 Form of Payment for Awards** . Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or (except with respect to Options) on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

**10.4 Limits on Transfer** . No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

**10.5 Beneficiaries** . Notwithstanding Section 10.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the Participant's estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

**10.6 Stock Trading Restrictions** . All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

**10.7 Effect of a Change in Control** . Upon the occurrence or in anticipation of a Change in Control, the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash rather than Stock, (ii) that Awards or any portion thereof will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that performance targets and performance periods for Qualified Performance-Based Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. To the extent that any accelerated vesting causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated.

**10.8 Qualified Performance-Based Awards .**

(a) The provisions of the Plan are intended to ensure that all Options granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a unit, division, region, department or function within the Company or an Affiliate:

- Gross or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of goods sold and gross margin
- Costs and expenses, including research & development and selling, general & administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
- Cash flows and share price
- Return on investment, capital, equity
- Manufacturing efficiency if applicable (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management if applicable (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)

- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning
- Objective goals consistent with the Participant's specific duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in percentages, or in terms of growth from period to period or growth rates over time as well as measured relative to an established or specially-created performance index of Company competitors, peers or other members of relevant industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

(c) Each Qualified Performance-Based Award (other than an Option) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, including the condition as to continued employment as set forth in subsection (f) below, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, in its sole discretion, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon a Change in Control. In addition, the Committee has the right, in connection with the grant of a Qualified Performance-Based Award, in its sole discretion to determine that the portion of such Award actually earned, vested and payable (as applicable) shall be less than the portion that would be earned, vested and payable based solely upon application of the applicable performance goals. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as ninety (90) days and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award, at the time the performance goals are established, that any evaluation of performance shall include, exclude or otherwise equitably adjust for any of the following events that occurs during a performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Written certification may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made. Except as specifically provided in subsection (c), no Qualified Performance-Based Award held by a Covered Employee or an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) With respect to a Participant who is an officer of the Company, any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the officer having remained continuously employed by the Company or an Affiliate for the entire performance or measurement period, including, as well, through the date of determination and certification of the payment of any such Award pursuant to subsection (e) above (the "Certification Date"). For purposes of the Plan, with respect to any given performance or measurement period, an officer of the Company (i) who terminates employment (regardless of cause) or who otherwise ceases to be an officer, prior to the Certification Date, and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in officer status, shall be deemed to have been employed by the Company as an officer through the Certification Date for purposes of payment eligibility.

**10.9 Termination of Employment .** Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

**10.10 Forfeiture Events .** The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

**10.11 Substitute Awards .** The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

## **ARTICLE 11 CHANGES IN CAPITAL STRUCTURE**

**11.1 Adjustments .** In the event of a nonreciprocal transaction between the Company and its shareholders that causes the per-share value of the Stock to change (including, without limitation, any stock dividend, stock split, spin-off, rights offering, or large nonrecurring cash dividend), the authorization limits under Section 5.1 shall be adjusted proportionately, and the Committee shall make such adjustments to the Plan and Awards as it deems necessary, in its sole discretion, to prevent dilution or enlargement of rights immediately resulting from such transaction. Action by the Committee may include: (i) adjustment of the number and kind of shares that may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically, without the necessity for any additional action by the Committee, be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Article 11 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

**ARTICLE 12**  
**AMENDMENT, MODIFICATION AND TERMINATION**

**12.1 Amendment, Modification And Termination** . The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without shareholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the number of Shares available under the Plan, (ii) expand the types of awards under the Plan, (iii) materially expand the class of participants eligible to participate in the Plan, (iv) materially extend the term of the Plan, or (v) otherwise constitute a material change requiring shareholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to shareholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of shareholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) to comply with the listing or other requirements of an Exchange, or (ii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

**12.2 Awards Previously Granted** . At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

(a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);

(b) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

**12.3 Compliance Amendments** . Notwithstanding anything in the Plan or in any Award Certificate to the contrary, the Committee may amend the Plan or an Award Certificate, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan or Award Certificate to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Award under this Plan, a Participant agrees to any amendment made pursuant to this Section 12.3 to any Award granted under the Plan without further consideration or action.

**ARTICLE 13**  
**GENERAL PROVISIONS**

**13.1 No Rights to Awards; Non-Uniform Determinations** . No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

**13.2 No Shareholder Rights** . No Award gives a Participant any of the rights of a shareholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

**13.3 Special Provisions Related to Section 409A of the Code** . To the extent applicable, the Plan, all Awards and all Award Certificates shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the effective date of the Plan. Notwithstanding any provision of the Plan or any Award Certificate to the contrary, if, following the effective date of the Plan, the Committee determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the effective date of the Plan), the Committee may adopt such amendments to the Plan and the applicable Award Certificate or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

**13.4 Withholding** . The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes. All such elections shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

**13.5 No Right to Continued Service** . Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise. Neither an Award nor any benefits arising under this Plan shall constitute an employment contract with the Company or any Affiliate and, accordingly, subject to Article 12, this Plan and the benefits hereunder may be terminated at any time in the sole and exclusive discretion of the Board without giving rise to any liability on the part of the Company or any of its Affiliates.

**13.6 Relationship to Other Benefits** . No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

**13.7 Titles and Headings** . The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

**13.8 Gender and Number** . Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

**13.9 Fractional Shares** . No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

**13.10 Government and Other Regulations** .

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

**13.11 Governing Law** . To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of California without giving effect to principles of conflict of laws.

**13.12 Additional Provisions** . Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

**13.13 No Limitations on Rights of Company** . The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

**13.14 Indemnification** . To the extent permitted under applicable law, each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

**13.15 Availability of Information** . To the extent required by applicable law, the Company shall provide to each Participant and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Participant or purchaser has one or more Options outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements.

**OPTION AGREEMENT  
TERMS AND CONDITIONS**

**1. Grant of Option** . The Company hereby grants to the Optionee named on the Notice of Stock Option Grant (“Optionee”), under the Plan, stock options to purchase from the Company (the “Options”), on the terms and on conditions set forth in this agreement (this “Agreement”), the number of shares indicated on the Notice of Stock Option Grant of the Company’s \$0.001 par value common stock, at the exercise price per share set forth on the Notice of Stock Option Grant. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Plan.

**2. Vesting of Options** . The Option shall vest (become exercisable) in accordance with the schedule shown on the Notice of Stock Option Grant. Notwithstanding the foregoing vesting schedule, upon Optionee’s death or Disability during his or her Continuous Status as a Participant, or upon a Change in Control, all Options shall become fully vested and exercisable.

**3. Term of Options and Limitations on Right to Exercise** . The term of the Options will be for a period of 10 years, expiring at 5:00 p.m., Pacific Time, on the tenth anniversary of the Grant Date (the “Expiration Date”). To the extent not previously exercised, the Options will lapse prior to the Expiration Date upon the earliest to occur of the following circumstances:

(a) Thirty (30) days after the termination of Optionee’s Continuous Status as a Participant for any reason other than by reason of Optionee’s death or Disability.

(b) Twelve (12) months after termination of Optionee’s Continuous Status as Participant by reason of Disability.

(c) Twelve (12) months after the date of Optionee’s death, if Optionee dies while employed or during the thirty day period described in subsection (a) above or during the twelve-month period described in subsection (b) above and before the Options otherwise lapse. Upon Optionee’s death, the Options may be exercised by Optionee’s beneficiary designated pursuant to the Plan.

The Committee may, prior to the lapse of the Options under the circumstances described in paragraphs (a), (b) or (c) above, extend the time to exercise the Options as determined by the Committee in writing, but in no event beyond the Expiration Date. If Optionee returns to service with the Company during the designated post-termination exercise period, then Optionee shall be restored to the status Optionee held prior to such termination but no vesting credit will be earned for any period Optionee was not in Continuous Status as a Participant. If Optionee or his or her beneficiary exercises an Option after termination of service, the Options may be exercised only with respect to the Shares that were otherwise vested on Optionee’s termination of service.

**4. Exercise of Option .** The Options shall be exercised by (a) written notice delivered to the Chief Financial Officer of the Company or his or her designee at the address and in the form specified by the Company from time to time and (b) payment to the Company in full for the Shares subject to such exercise (unless the exercise is a broker-assisted cashless exercise, as described below). If the person exercising an Option is not Optionee, such person shall also deliver with the notice of exercise appropriate proof of his or her right to exercise the Option. Payment for such Shares may be, in (a) cash, (b) Shares previously acquired by the purchaser, (c) withholding of Shares from the Option, or (d) any combination thereof, for the number of Shares specified in such written notice. The value of surrendered or withheld Shares for this purpose shall be the Fair Market Value as of the last trading day immediately prior to the exercise date. To the extent permitted under Regulation T of the Federal Reserve Board, and subject to applicable securities laws and any limitations as may be applied from time to time by the Committee (which need not be uniform), the Options may be exercised through a broker in a so-called “cashless exercise” whereby the broker sells the Option Shares on behalf of Optionee and delivers cash sales proceeds to the Company in payment of the exercise price. In such case, the date of exercise shall be deemed to be the date on which notice of exercise is received by the Company and the exercise price shall be delivered to the Company by the settlement date.

**5. Beneficiary Designation .** Optionee may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of Optionee hereunder and to receive any distribution with respect to the Options upon Optionee’s death. A beneficiary, legal guardian, legal representative, or other person claiming any rights hereunder is subject to all terms and conditions of this Agreement and the Plan, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives Optionee, the Options may be exercised by the legal representative of Optionee’s estate, and payment shall be made to Optionee’s estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by Optionee at any time provided the change or revocation is filed with the Company.

**6. Withholding .** The Company or any employer Affiliate has the authority and the right to deduct or withhold, or require Optionee to remit to the employer, an amount sufficient to satisfy federal, state, and local taxes (including Optionee’s FICA obligation) required by law to be withheld with respect to any taxable event arising as a result of the exercise of the Options. The withholding requirement may be satisfied, in whole or in part, at the election of the Company, by withholding from the Options Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Company establishes.

**7. Limitation of Rights .** The Options do not confer to Optionee or Optionee’s beneficiary designated pursuant to Paragraph 5 any rights of a shareholder of the Company unless and until Shares are in fact issued to such person in connection with the exercise of the Options. Nothing in this Agreement shall interfere with or limit in any way the right of the Company or any Affiliate to terminate Optionee’s service at any time, nor confer upon Optionee any right to continue in the service of the Company or any Affiliate.

**8. Restrictions on Transfer and Pledge .** No right or interest of Optionee in the Options may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of Optionee to any other party other than the Company or an Affiliate. The Options are not assignable or transferable by Optionee other than by will or the laws of descent and distribution or pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Option under the Plan; provided, however, that the Committee may (but need not) permit other transfers. The Options may be exercised during the lifetime of Optionee only by Optionee or any permitted transferee.

**9. Restrictions on Issuance of Shares** . If at any time the Committee shall determine in its discretion, that registration, listing or qualification of the Shares covered by the Options upon any Exchange or under any foreign, federal, or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition to the exercise of the Options, the Options may not be exercised in whole or in part unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Committee.

**10. Amendment** . The Committee may amend, modify or terminate the Award, Notice of Stock Option Grant and this Agreement without approval of Optionee; provided, however, that such amendment, modification or termination shall not, without Optionee's consent, reduce or diminish the value of this award determined as if it had been fully vested and exercised on the date of such amendment or termination (with the per-share value being calculated as the excess, if any, of the Fair Market Value over the exercise price of the Options).

**11. Plan Controls** . The terms and conditions contained in the Plan are incorporated into and made a part of the Notice of Stock Option Grant and this Agreement, and the Notice of Stock Option Grant and this Agreement shall be governed by and construed in accordance with the Plan. In the event of any actual or alleged conflict between the provisions of the Plan and the provisions of the Notice of Stock Option Grant or this Agreement, the provisions of the Plan shall be controlling and determinative.

**12. Successors** . This Agreement shall be binding upon any successor of the Company, in accordance with the terms of this Agreement and the Plan.

**13. Severability** . If any one or more of the provisions contained in the Notice of Stock Option Grant or this Agreement is invalid, illegal or unenforceable, the other provisions of Notice of Stock Option Grant and this Agreement will be construed and enforced as if the invalid, illegal or unenforceable provision had never been included.

**14. Notice** . Notices and communications under the Notice of Stock Option Grant and this Agreement must be in writing and either personally delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid. Notices to the Company must be addressed to: Notify Technology Corporation, 1054 S. De Anza Boulevard, Suite 105, San Jose, CA 95129, Attn: Secretary, or any other address designated by the Company in a written notice to Optionee. Notices to Optionee will be directed to the address of Optionee then currently on file with the Company, or at any other address given by Optionee in a written notice to the Company.