AUTOBYTEL INC

FORM 10-Q
(Quarterly Report)

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

Form 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended June 30, 2010
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 0-22239

Autobytel Inc.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**33-0711569** **(I.R.S. Employer identification number)**
18872 MacArthur Boulevard, Suite 200, Irvine, California **(Address of principal executive offices)**	**92612** **(Zip Code)**

(949) 225-4500
(Registrant's telephone number, including area code)

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 (section 232.405 of this chapter) 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 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 Rule12b-2 of the Exchange Act.

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 ☒

As of July 31, 2010, there were 45,389,431 shares of the Registrant's Common Stock outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. ***Financial Statements***

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED BALANCE SHEETS

(Amounts in thousands, except share and per-share data)

	June 30, 2010	December 31, 2009
Assets		
Current assets:		
Cash and cash equivalents	$ 23,877	$ 25,097
Accounts receivable, (net of allowances for bad debts and customer credits of $659 and $1,107 at June 30, 2010 and December 31, 2009, respectively)	7,438	8,573
Prepaid expenses and other current assets	987	594
Total current assets	32,302	34,264
Property and equipment, net	863	1,003
Other assets	149	123
Total assets	$ 33,314	$ 35,390
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 2,922	$ 2,539
Accrued expenses and other current liabilities	3,196	4,028
Deferred revenues	540	603
Total current liabilities	6,658	7,170
Non-current liabilities	45	79
Total liabilities	6,703	7,249
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 11,445,187 shares authorized; none outstanding	—	—
Common stock, $0.001 par value; 200,000,000 shares authorized and 45,382,729 and 45,168,706 shares issued and outstanding at June 30, 2010 and 2009, respectively	45	45
Additional paid-in capital	302,505	301,831
Accumulated deficit	(275,939)	(273,735)
Total stockholders' equity	26,611	28,141
Total liabilities and stockholders' equity	$ 33,314	$ 35,390

See accompanying notes.

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS

AND COMPREHENSIVE LOSS

(Amounts in thousands, except per-share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Net revenues:				
Lead fees	$ 11,245	$ 11,583	$ 21,979	$ 23,735
Advertising	869	1,786	1,922	3,473
Other revenues	17	75	42	107
Total net revenues	12,131	13,444	23,943	27,315
Cost of revenues (excludes depreciation of $321 and $197 for the three months ended June 30, 2010 and 2009, respectively and $643 and $450 for the six months ended June 30, 2010 and 2009, respectively)	7,889	9,022	14,953	17,908
Gross profit	4,242	4,422	8,990	9,407
Operating expenses:				
Sales and marketing	2,904	2,542	5,671	5,245
Technology support	1,583	1,226	2,980	2,687
General and administrative	3,077	3,032	5,791	7,023
Patent litigation settlement	(43)	(179)	(2,806)	(2,846)
Total operating expenses	7,521	6,621	11,636	12,109
Operating loss	(3,279)	(2,199)	(2,646)	(2,702)
Interest and other income	313	675	490	821
Loss before income tax expense	(2,966)	(1,524)	(2,156)	(1,881)
Income tax expense (benefit)	35	(495)	48	(495)
Loss from continuing operations	(3,001)	(1,029)	(2,204)	(1,386)
Discontinued operations	—	778	—	778
Net loss and comprehensive loss	$ (3,001)	$ (251)	$ (2,204)	$ (608)
Basic and diluted loss per common share:				
Loss from continuing operations	$ (0.07)	$ (0.02)	$ (0.05)	$ (0.03)
Discontinued operations, net	—	0.02	—	0.02
Basic and diluted loss per common share	$ (0.07)	$ (0.01)	$ (0.05)	$ (0.01)

See accompanying notes.

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS

(Amounts in thousands)

	Six Months Ended June 30, 2010	Six Months Ended June 30, 2009
Cash flows from operating activities:		
Net loss	$ (2,204)	$ (608)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	643	900
Provision for bad debts	82	607
Provision for customer credits	287	567
Gain on sale of AVV business	—	(1,273)
Share-based compensation	572	525
Changes in assets and liabilities:		
Accounts receivable	766	689
Prepaid expenses and other current assets	(393)	676
Other non-current assets	(40)	(569)
Accounts payable	383	217
Accrued expenses and other liabilities	(832)	(3,151)
Deferred revenues	(63)	(895)
Non-current liabilities	(34)	(44)
Net cash used in operating activities	(833)	(2,359)
Cash flows from investing activities:		
Purchases of property and equipment	(489)	(119)
Proceeds from sale of AVV business	—	1,273
Proceeds from available-for-sale investments	—	580
Net cash (used in) provided by investing activities	(489)	1,734
Cash flows from financing activities:		
Proceeds from exercise of stock options and awards issued under the employee stock purchase plan	102	—
Net cash provided by financing activities	102	—
Net decrease in cash and cash equivalents	(1,220)	(625)
Cash and cash equivalents, beginning of period	25,097	27,393
Cash and cash equivalents, end of period	$ 23,877	$ 26,768

See accompanying notes.

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

1. Organization and Operations of Autobytel

Autobytel Inc. (" **Autobytel** " or the " **Company** ") is an automotive marketing services company that helps automotive retail dealers (" **Dealers** ") and automotive manufacturers (" **Manufacturers** ") market and sell new and used vehicles through its internet lead referral and online advertising programs. Internet lead referrals (" **Leads** ") are consumer internet requests for pricing and availability of new or used vehicles or for vehicle financing. Leads originate from the Company's websites or are purchased from third parties (" **Network Websites** "), and are sold primarily to Dealers and Manufacturers. The Company's consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com sm, CarSmart.com ®, CarTV.com ®, and MyRide.com ® provide consumers with information and tools to aid them with their automotive purchase decisions and the opportunity to submit Lead requests. Manufacturers direct consumers to their messages and their respective websites by purchasing advertising on the Company's websites.

The Company was incorporated in Delaware on May 17, 1996. Its principal corporate offices are located in Irvine, California. The Company's common stock is listed on The NASDAQ Global Market under the symbol ABTL.

The Company has historically experienced negative cash flow and at June 30, 2010 had an accumulated deficit of $276 million. The Company continues to face many risks and uncertainties related to the general economic conditions and the automotive industry in particular, however, the Company believes current cash and cash equivalents are sufficient to meet anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

2. Basis of Presentation, Unaudited Interim Financial Statements

The unaudited consolidated condensed financial statements of Autobytel presented herein are presented on the same basis as the Company's 2009 Annual Report on Form 10-K. Autobytel has made its disclosures in accordance with accounting principles generally accepted in the United States of America as they apply to interim reporting, but condensed or omitted certain information and disclosures normally included in notes to consolidated financial statements in accordance with the Securities and Exchange Commission's rules and regulations. The unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K filed with the SEC for the year ended December 31, 2009.

In the opinion of Autobytel's management, the accompanying unaudited interim consolidated condensed financial statements contain all adjustments (consisting of normal recurring adjustments) necessary to fairly present Autobytel's consolidated condensed financial position as of June 30, 2010 and the consolidated condensed statements of operations for the three and six months ended June 30, 2010 and 2009 and cash flows for the six months ended June 30, 2010 and 2009, as applicable. The statements of operations and comprehensive loss and cash flows for the periods ended June 30, 2010 and 2009 are not necessarily indicative of the results of operations or cash flows expected for the year or any other period.

Certain reclassifications have been made to prior periods' consolidated condensed financial statements to conform to the current year presentation. These reclassifications include presenting bad debt expense in Sales and Marketing and presenting rental expense in General and Administrative expense.

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

3. Computation of Basic and Diluted Net Loss Per Share

Basic net loss per share is computed using the weighted average number of common shares outstanding during the period, excluding any unvested restricted stock. Diluted net loss per share is computed using the weighted average number of common shares, and if dilutive, potential common shares outstanding, as determined under the treasury stock method, during the period. Potential common shares consist of unvested restricted stock and the common shares issuable upon the exercise of stock options. The following are the share amounts utilized to compute the basic and diluted net loss per share for the three and six months ended June 30, 2010 and 2009:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Basic shares:				
Weighted average common shares outstanding	45,256,231	45,184,679	45,212,710	45,184,679
Weighted average unvested restricted stock	(296,456)	(685,000)	(330,977)	(685,000)
Basic shares	44,959,775	44,499,679	44,881,733	44,499,679
Diluted Shares:				
Basic Shares	44,959,775	44,499,679	44,881,733	44,499,679
Weighted average dilutive securities	1,161,684	—	1,143,867	—
Dilutive Shares	46,121,459	44,499,679	46,025,600	44,499,679

For both the three and six months ended June 30, 2010, 3.8 million anti-dilutive potential shares of common stock have been excluded from the calculation of diluted earnings per share, respectively. For the three and six months ended June 30, 2009, 7.9 million and 7.5 million anti-dilutive potential shares of common stock have been excluded from the calculation of diluted earnings per share, respectively.

4. Share-Based Compensation

Share-based compensation expense is included in costs and expenses in the accompanying Consolidated Condensed Statements of Operations and Comprehensive Loss as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
	(in thousands)		*(in thousands)*	
Cost of revenues	$ 9	$ 6	$ 18	$ 12
Sales and marketing	55	108	114	192
Technology support	33	2	65	24
General and administrative (a)	233	141	375	297
Total share-based compensation costs	$ 330	$ 257	$ 572	$ 525

(a) Approximately $96,000 of accelerated stock compensation is included in the six months ended June 30, 2010 amount. Approximately $46,000 of accelerated stock compensation expense is included in the six months ended June 30, 2009 amount. Vesting of these awards accelerated in accordance with the original award agreements.

Service-Based Options. During the three months ended June 30, 2010, the Company granted 648,710 service-based stock options with weighted average grant date fair values of $0.63. During the six months ended June 30, 2010, the Company granted 871,210 service-based stock options with weighted average grant date fair values of $0.64. During the three months ended June 30, 2009, the Company granted 1,000,000 service-based stock options with weighted average grant date fair values of $0.14. During the six months ended June 30, 2009, the Company granted 1,200,000 service-based stock options, with weighted average grant date fair values of $0.16. These options generally vest one-third on the first anniversary

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

of the grant date and ratably over twenty-four months thereafter. The vesting of these awards is contingent upon the employee rendering service to the Company during the vesting period.

The Company's President and Chief Executive Officer was granted the 1,000,000 service based options during the three months ended June 30, 2009 (" **CEO Awards** "). The CEO Awards vest on the first anniversary of the grant date and have an exercise price of $0.35, which was higher than the closing price of the Company's common stock on the grant date. The shares that are issuable upon exercise of the CEO Awards are subject to restrictions on resale that lapse over time (as to one-third on the first anniversary of the grant date and thereafter will lapse as to the remaining two-thirds of the shares in equal one-twelfth (1/12) installments of the original number of shares subject to the options each quarter until all resale restrictions have lapsed). The vesting of these options and lapse of the resale restrictions will accelerate upon involuntary termination of employment by the Company without cause or for voluntary termination by the CEO for good reason.

Market Condition Options. During the six months ended June 30, 2009 the Company granted 1,068,250 stock options to substantially all employees with a fair market value per option granted of $0.35, using a Black-Scholes option pricing model. One-third of these options cliff vest on the first anniversary following the grant date and the remaining two-thirds vest ratably over twenty-four months thereafter. In addition, the remaining two-thirds of the awards must meet additional conditions in order to be exercised. One-third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least two times the option exercise price to be exercised (" **Market Condition A** "). The final one-third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least three times the option exercise price to be exercised (" **Market Condition B** "). Certain of these options will accelerate vesting upon a change in control. Market Condition A was achieved during 2009 and Market Condition B was achieved in July 2010.

During the three and six months ended June 30, 2010, 226,108 stock options were exercised, with an aggregate weighted average exercise price of $0.45. There were no options exercised during the three and six months ended June 30, 2009. The grant date fair value of stock options granted during these periods was estimated using the Black-Scholes option-pricing model using the following weighted average assumptions:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Dividend yield	—	—	—	—
Volatility	83%	75%	83%	73%
Risk-free interest rate	1.7%	1.6%	1.8%	1.6%
Expected life (years)	4.1	4.1	4.1	4.1

5. Selected Balance Sheet Accounts

Property and Equipment . Property and equipment consists of the following:

	June 30, 2010	December 31, 2009
	(in thousands)	
Computer software and hardware	$ 9,634	$ 9,183
Furniture and equipment	1,431	1,432
Leasehold improvements	949	949
Capitalized internal use software	912	912
	12,926	12,476
Less – Accumulated depreciation and amortization	(12,063)	(11,473)
Property and equipment, net	$ 863	$ 1,003

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

At both June 30, 2010 and December 31, 2009, capitalized internal use software, net of amortization, and development in process was $0.1 million.

The Company periodically reviews long-lived assets to determine if there are any impairment indicators. The Company assesses the impairment of these assets, or the need to accelerate amortization, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The Company's judgments regarding the existence of impairment indicators are based on legal factors, market conditions and operational performance of our long-lived assets. If such indicators exist, the Company evaluates the assets for impairment based on the estimated future undiscounted cash flows expected to result from the use of the assets and their eventual disposition. Should the carrying amount of an asset exceed its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value. Fair value is generally determined based on a valuation process that provides an estimate of a fair value of these assets using a discounted cash flow model, which includes assumptions and estimates.

Concentration of Credit Risk and Risks Due to Significant Customers . Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. Cash and cash equivalents are primarily maintained with three financial institutions in the United States. Deposits held by banks exceed the amount of insurance provided for such deposits. These deposits may be redeemed upon demand. Accounts receivable are primarily derived from fees billed to automotive dealers and automotive manufacturers. The Company generally requires no collateral to support its accounts receivables and maintains an allowance for bad debts for potential credit losses.

The Company has a concentration of credit risk with its automotive industry related accounts receivable balances, and in particular with the three largest U.S. automobile manufacturers (General Motors, Chrysler LLC, and Ford) (" **Detroit Three** "). During the first six months of 2010 approximately 12% of the Company's total revenues was derived from the Detroit Three, and approximately 12% or $1.0 million of gross accounts receivable related to the Detroit Three at June 30, 2010.

Accrued Expenses and Other Current Liabilities . Accrued expenses and other current liabilities consisted of the following:

	June 30, 2010	December 31, 2009
	(in thousands)	
Compensation and related costs	$ 1,782	$ 2,629
Professional fees and other accrued expenses	895	667
Amounts due to customers	380	468
Other current liabilities	139	264
Total accrued expenses and other current liabilities	$ 3,196	$ 4,028

6. Patent Litigation Settlements

Dealix Patent Litigation Settlement . In 2004, the Company brought a lawsuit for patent infringement against Dealix Corporation (" **Dealix** "). In December 2006, the Company entered into a settlement agreement with Dealix (" **Settlement Agreement** "). The Settlement Agreement required Dealix to pay the Company a total of $20.0 million in settlement payments for a mutual release of claims and a license from the Company to Dealix and its parent company, the Cobalt Group, of certain of the Company's patent and patent applications. On March 13, 2007, the Company received the initial $12.0 million settlement payment with the remainder to be paid out in installments of $2.7 million on the next three anniversary dates of the initial payment.

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

The Company did not have reasonable assurance that it would receive the remaining payment on its due date and therefore had not recorded any amounts receivable related to the Settlement Agreement as of December 31, 2009. As of June 30, 2010, the Company had received the final annual installment payment of $2.7 million. The Company recorded the payment as patent litigation settlement in the period payment was received, as a reduction to operating expenses.

Texas and California Patent Litigation Settlements . The Company entered into a settlement agreement with Insweb Corporation (" **Insweb** "), Leadpoint, Inc. (" **Leadpoint** "), and Internet Brands, Inc. (" **Internet Brands** ") settling and dismissing with prejudice various patent-related and other claims by and against the Company. Under the settlement terms, Autobytel granted to Insweb, Leadpoint and Internet Brands, and Insweb, Leadpoint and Internet Brands each granted to Autobytel, a non-exclusive perpetual license to their respective patents as well as long-term covenants not to sue any of the parties for infringement of current or future patents; and mutual releases of claims. In connection with the settlement, (i) Autobytel and Autodata Solutions, Inc. (" **Autodata** "), a wholly owned subsidiary of Internet Brands, entered into a Master License and Services Agreement pursuant to which the Company will have the right to publish certain editorial content, images, shopping tools and vehicle data provided by Autodata for a term of five years; and (ii) shares of Internet Brands' common stock previously issued to one of the Company's subsidiaries but held by Internet Brands was released to the Company. In addition, InsWeb and Autobytel entered into a Content License Agreement pursuant to which Autobytel will receive specific auto insurance editorial content, data and interactive tools from InsWeb. The content and tools will contain links to one of InsWeb's insurance websites, and Autobytel and InsWeb will share the revenue associated with consumer activity generated by the links. LeadPoint agreed to pay Autobytel $200,000, $100,000 of which was paid in connection with the signing of the settlement, to be followed by $50,000 installments payable on or before March 31, 2010 and September 30, 2010, respectively. In connection with the settlement, all claims brought by Insweb, Internet Brands and Leadpoint against Dominion Enterprises (" **Dominion** "), the purchaser of the Company's AVV business, and Retention Performance Marketing, Inc. (" **RPM** "), and OneCommand, Inc. (" **OneCommand** "), the purchaser of the Company's RPM business, were also dismissed with prejudice, with Internet Brands, Leadpoint, and Insweb each providing Dominion, OneCommand, and RPM covenants not to sue for infringement of the Insweb patent at issue in the litigation, and Dominion, OneCommand, and RPM each granting to Insweb, Internet Brands, and Leadpoint, and Insweb, Internet Brands and Leadpoint each granting to Dominion, OneCommand, and RPM, mutual releases of claims.

Edmunds Declaratory Relief Action Settlement . On March 13, 2008, Edmunds Holding Company and Edmunds.com (collectively " **Edmunds** ") filed a lawsuit against the Company in the United States District Court for the District of Delaware relating to the Company's U.S. Patent Number 6,282,517 for lead technology (" **517 Patent** "). In the lawsuit, Edmunds sought a declaration that its business activities, some of which include generating automotive leads, did not infringe the '517 Patent and that such patent was invalid. On February 20, 2009, this declaratory relief action was dismissed by the court. In March 2009, the Company entered into a settlement resolving the issues presented in Edmunds' declaratory judgment action. Under this settlement, Autobytel granted to Edmunds a limited license to the '517 Patent and other existing Autobytel leads-related patents in exchange for the right to publish on Autobytel's family of websites a select assortment of Edmunds.com's multi-media automotive content, including photos, editorial reviews, and articles. The settlement agreement also provided for mutual releases of claims. This settlement did not have a material impact on the Company's financial statements.

7. Discontinued Operations

On January 23, 2008, the Company completed the sale of certain assets and liabilities of its AVV, Inc. data extraction and customer relationship management software business to Dominion Enterprises (" **Dominion** ") for approximately $22.75 million in cash, plus a working capital payment of approximately $1.0 million. The Company recorded a gain on sale of approximately $4.2 million in connection with the transaction in the three months ended March 31, 2008. The parties also agreed to a $1.9 million escrow in connection with the transaction. During the three months ended June 30, 2009, the Company received approximately $1.3 million of the escrow proceeds, classifying this amount as a gain on sale, discontinued operations.

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

For the three and six months ended June 30, 2009, the results of operations of AVV are reported as discontinued operations, net of income taxes, as follows:

	Three Months Ended June 30, 2009	Six Months Ended June 30, 2009
	(in thousands)	
Total net revenues:	$ —	$ —
Cost of revenues	—	—
Gross profit		
Operating expenses:		
Sales and marketing	—	—
Technology support	—	—
General and administrative	—	—
Total operating costs	—	—
Gain on sale	1,273	1,273
Benefit from income taxes	(495)	(495)
Discontinued operations, net	$ 778	$ 778

8. Commitments and Contingencies

Employment Agreements

The Company has employment agreements and retention agreements with certain key employees. A number of these agreements require severance payments, continuation of certain insurance benefits and acceleration of vesting of stock options and restricted stock units in the event of a termination of employment without cause or for good reason. In addition, these employees were also granted stock options and awarded restricted stock, the agreements for which provide for acceleration of vesting upon a change of control.

Litigation

In August 2001, a purported class action lawsuit was filed in the United States District Court for the Southern District of New York against Autobytel and certain of the Company's current and former directors and officers (" **Autobytel Individual Defendants** ") and underwriters involved in the Company's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. This action purports to allege violations of the Securities Act of 1933 (" **Securities Act** ") and the Securities Exchange Act of 1934 (" **Exchange Act** "). Plaintiffs allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at predetermined prices. Plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. The parties in the approximately 300 coordinated cases, including the parties in the Autobytel case, reached a settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autobytel. On October 6, 2009, the Court granted final approval of the settlement. A group of three objectors filed a petition to the Second Circuit seeking permission to appeal the District Court's final approval order on the basis that the settlement class is broader than the class previously rejected by the Second Circuit in its December 2006 order reversing the District Court's order certifying classes in six of the coordinated cases. The six cases, which do not include Autobytel's case, are intended to serve as test cases. Plaintiffs filed an opposition to the petition. Objectors, including the objectors that filed the petition seeking permission to appeal, filed six notices of appeal of the Court's order finally approving the settlement. Subject to court approval, the objectors to the settlement will file their briefs in the Second Circuit no later than October 6, 2010, and answering briefs will be due no later than February 3, 2011. Due to the inherent uncertainties of

AUTOBYTEL INC.

NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement does not survive appeal, and Autobytel is found liable, it is possible that damages could be greater than Autobytel's insurance coverage and the impact on Autobytel's financial statements could be material.

Between April and September 2001, eight separate purported class actions virtually identical to the one filed against Autobytel were filed against Autoweb.com, Inc. (" **Autoweb** "), certain of Autoweb's former directors and officers (" **Autoweb Individual Defendants** "), and underwriters involved in Autoweb's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. It purports to allege violations of the Securities Act and the Exchange Act. Plaintiffs allege that the underwriter defendants agreed to allocate stock in Autoweb's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at predetermined prices. Plaintiffs also allege that the prospectus for Autoweb's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. The parties in the approximately 300 coordinated cases, including Autoweb's case, reached a settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autoweb. On October 6, 2009, the Court granted final approval of the settlement. A group of three objectors filed a petition to the Second Circuit seeking permission to appeal the District Court's final approval order on the basis that the settlement class is broader than the class previously rejected by the Second Circuit in its December 2006 order reversing the District Court's order certifying classes in six of the coordinated cases. The six cases, which do not include Autoweb's case, are intended to serve as test cases. Plaintiffs filed an opposition to the petition. Objectors, including objectors that filed the petition seeking permission to appeal, filed six notices of appeal of the Court's order finally approving the settlement. Subject to court approval, the objectors to the settlement will file their briefs in the Second Circuit no later than October 6, 2010, and answering briefs will be due no later than February 3, 2011. Due to inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement does not survive that appeal, and Autoweb is found liable, it is possible that damages could be greater than Autoweb's insurance coverage and the impact on Autobytel's financial statements could be material.

From time to time, the Company may be involved in other litigation matters arising from the normal course of its business activities. The actions filed against the Company and other litigation, even if not meritorious, could result in substantial costs and diversion of resources and management attention, and an adverse outcome in litigation could materially adversely affect its business, results of operations, financial condition, and cash flows.

9 **. Related Party Transaction**

The Compensation Committee approved a payment of $70,000 to Maverick Associates LLC, a Delaware limited liability company, for consulting services rendered to the Company by Jeffrey H. Coats during 2008 in connection with the Company's evaluation of strategic alternatives and development and implementation of cost reduction initiatives by the Company. Mr. Coats is the sole member of Maverick Associates. The $70,000 was recorded as an expense in the six month period ended June 30, 2009.

Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

The Securities and Exchange Commission (" **SEC** ") encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipates," "estimates," "expects," "projects," "intends," "plans," "believes" and words of similar substance used in connection with any discussion of future operations or financial performance identify forward-looking statements. In particular, statements regarding expectations and opportunities, industry trends, new product expectations and capabilities, and our outlook regarding our performance and growth are forward-looking statements. This Quarterly Report on Form 10-Q also contains statements regarding plans, goals and objectives. There is no assurance that we will be able to carry out our plans or achieve our goals and objectives or that we will be able to do so successfully on a profitable basis. These forward-looking statements are just predictions and involve risks and uncertainties, many of which are beyond our control, and actual results may differ materially from these statements. Factors that could cause actual results to differ materially from those reflected in forward-looking statements include, but are not limited to, those discussed in this Item 2 and under the heading "Risk Factors" in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2009. Investors are urged not to place undue reliance on forward-looking statements. Forward-looking statements speak only as of the date on which they were made. Except as may be required by law, we do not undertake any obligation, and expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All forward-looking statements contained herein are qualified in their entirety by the foregoing cautionary statements.

You should read the following discussion of our results of operations and financial condition in conjunction with our consolidated condensed financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and our consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K for the year ended December 31, 2009.

Our corporate website is located at *www.autobytel.com* . Information on our website is not incorporated by reference in this Quarterly Report. At or through the Investor Relations section of our website we make available free of charge our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to these reports as soon as practicable after that material is electronically filed with or furnished to the SEC. Our Code of Conduct and Ethics for Employees, Officers and Directors is available at the Corporate Governance link of the Investor Relations section of our website.

Basis of Presentation

The unaudited consolidated condensed financial statements presented herein are presented on the same basis as the Company's 2009 Annual Report on Form 10-K. We have made the disclosures in accordance with accounting principles generally accepted in the United States of America as they apply to interim reporting, but condensed or omitted certain information and disclosures normally included in notes to consolidated financial statements in accordance with the SEC's rules and regulations. The unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and the notes thereto in our Annual Report on Form 10-K filed with the SEC for the year ended December 31, 2009.

Certain reclassifications have been made to prior periods' consolidated financial statements to conform to the current year presentation. These reclassifications include presenting bad debt expense in Sales and Marketing and presenting rental expense in General and Administrative expense.

Overview

We are an automotive marketing services company that helps automotive retail dealers (" **Dealers** ") and automotive manufacturers (" **Manufacturers** ") market and sell new and used vehicles through our internet lead referral and online advertising programs. Internet lead referrals (" **Leads** ") are consumer internet requests for pricing and availability of new or used vehicles or for vehicle financing. Leads originate from our websites or are purchased from third parties (" **Network Websites** "), and are sold primarily to Dealers and Manufacturers. Our consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com ℠, CarSmart.com ®, CarTV.com ®, and MyRide.com ® provide consumers with information and tools to aid them with their automotive purchase decisions and the opportunity to submit Lead requests. Manufacturers direct consumers to their messages and their respective websites by purchasing advertising on our websites. Our websites are the source of an increasing percentage of our Leads and provide a significant portion of the page views for the advertising component of our business.

For the three and six months ended June 30, 2010 our results of operations were affected and may continue to be affected in the future, by market and economic factors, including, but not limited to, the following:

- General economic conditions, specifically including the adverse effect of high unemployment on the number of vehicle purchasers and the lack of available consumer credit to finance vehicle purchases. These adverse economic conditions have affected the automotive industry, which is currently enduring what is considered to be the most challenging environment of the past several decades:
  - North American vehicle sales remain highly volatile and are expected to track at relatively low levels in 2010, and
  - Dealer consolidations, closings, and bankruptcies continue.
- The market for Leads, including:
  - The effects of competition and Lead sourcing (i.e., Leads from our websites versus Leads acquired from third parties) on our supply and acquisition costs of quality Leads and the resulting effects on sales, pricing and margins for our services and products, and
  - A declining Dealer base.
- The market for advertising services, including:
  - Continued volatility in spending by Manufacturers and others in marketing allocations,
  - The amount of visits (traffic) to our websites,
  - The cost of acquiring traffic to our websites, and
  - The rates attainable from our advertisers.

Results of Operations

Three Months Ended June 30, 2010 Compared to the Three Months Ended June 30, 2009

	2010	% of total net revenues	2009	% of total net revenues	$ Change	% Change
	(Dollar amounts in thousands)					
Net revenues:						
Lead fees	$ 11,245	93%	$ 11,583	86%	$ (338)	(3)%
Advertising	869	7	1,786	13	(917)	(51)
Other	17	—	75	1	(58)	(77)
Total net revenues	12,131	100	13,444	100	(1,313)	(10)
Cost of revenues (excludes depreciation of $321 and $197 for the three months ended June 30, 2010 and 2009, respectively)	7,889	65	9,022	67	(1,133)	(13)
Gross profit	4,242	35	4,422	33	(180)	(4)
Operating expenses:						
Sales and marketing	2,904	24	2,542	19	362	14
Technology support	1,583	13	1,226	9	357	29
General and administrative	3,077	25	3,032	23	45	1
Patent litigation settlement	(43)	—	(179)	(1)	136	(76)
Total operating expenses	7,521	62	6,621	50	900	14
Operating loss	(3,279)	(27)	(2,199)	(17)	(1,080)	49
Interest and other income	313	3	675	5	(362)	(54)

Loss before income tax expense	(2,966)	(24)	(1,524)	(12)	(1,442)	95
Income tax expense (benefit)	35	—	(495)	(4)	530	(107)
Loss from continuing operations	(3,001)	(24)	(1,029)	(8)	(1,972)	192
Discontinued operations	—	—	778	6	(778)	(100)
Net loss	$ (3,001)	(24)%	$ (251)	(2)%	$ (2,750)	1,096%

Lead Fees. Lead fees decreased $0.3 million or 3% in second quarter 2010 compared to second quarter 2009 primarily due to a shift in mix from new and used retail Leads to Manufacturer Leads, which has a lower average sales price per lead. The use of incentives to drive incremental Dealer sign-ups also had a negative impact during the second quarter 2010. The volume of new and used retail Leads delivered decreased 19%, which was partially offset by an increase in the volume of Leads delivered to Manufacturers and finance Leads delivered of 14% and 34%, respectively, as the automotive consumer credit environment showed signs of recovery in the second quarter 2010.

Advertising. Advertising revenues decreased $0.9 million or 51% in second quarter 2010 compared to second quarter 2009 due primarily to unsold advertising, as ad budgets for our Manufacturer customers have remained conservative and a 23% decline in page views, which was due to the elimination of a large traffic partner in the fourth quarter of 2009.

Cost of Revenues. Cost of revenues consists of Lead and traffic acquisition costs, and other cost of revenues. Lead and traffic acquisition costs consist of payments made to our Lead suppliers, including internet portals and online automotive information providers. Other cost of revenues consists of search engine marketing and fees paid to third parties for data and content included on our properties, connectivity costs, technology license fees, development and maintenance costs related to our websites, server equipment depreciation and technology amortization and compensation related expense. Search engine marketing ("SEM"), sometimes referred to as paid search marketing, is the practice of bidding on keywords on search engines to drive traffic to a website. Our SEM also provides a source of Leads generated from our websites.

The $1.1 million or 13% decrease in the cost of revenues in second quarter 2010 compared to second quarter 2009 was due primarily to a decrease of $0.8 million in Lead acquisition costs directly related to the change in mix of Leads delivered and a $0.4 million decrease in other traffic acquisition costs.

Sales and Marketing. Sales and marketing expense includes costs for developing our brand equity, internal personnel costs, and other costs associated with dealer sales, website advertising, dealer support, and bad debt expense. Sales and marketing expense in second quarter 2010 increased by $0.4 million or 14% compared to second quarter 2009 due principally to higher advertising and strategic new hire personnel costs.

Technology Support. Technology support expense includes personnel costs related to enhancing the features, content and functionality of our websites and our Internet-based communications platform, costs associated with our telecommunications and computer infrastructure, and costs related to data and technology development. Technology support expenses in second quarter 2010 increased by $0.4 million or 29% compared to second quarter 2009 due to increased strategic new hire personnel costs.

General and Administrative. General and administrative expense consists of executive, financial and legal personnel expenses and costs related to being a public company. General and administrative expense in second quarter 2010 was consistent with second quarter 2009.

Interest and other income. Interest and other income was $0.3 million in second quarter 2010 and consisted primarily of patent licensing fees received in the quarter. Interest and other income was $0.7 million in second quarter 2009 and primarily represented a gain recognized on the sale of available-for-sale securities.

Income taxes. Income tax expense was $35,000 in the second quarter of 2010. For the second quarter of 2009, the Company recorded an income tax benefit of $495,000. The current quarter tax expense was primarily related to state taxes in Texas and Michigan. The prior year tax benefit was due to realization of losses from continuing operations as the operating losses offset gains and taxes attributable to discontinued operations.

Six Months Ended June 30, 2010 Compared to the Six Months Ended June 30, 2009

	2010	% of total net revenues	2009	% of total net revenues	$ Change	% Change
	(Dollar amounts in thousands)					
Net revenues:						
Lead fees	$ 21,979	92%	$ 23,735	87%	$ (1,756)	(7)%
Advertising	1,922	8	3,473	13	(1,551)	(45)
Other	42	—	107	—	(65)	(61)
Total net revenues	23,943	100	27,315	100	(3,372)	(12)
Cost of revenues (excludes depreciation of $643 and $450 for the six months ended June 30, 2010 and 2009, respectively,)	14,953	62	17,908	66	(2,955)	(17)
Gross profit	8,990	38	9,407	34	(417)	(4)
Operating expenses:						
Sales and marketing	5,671	24	5,245	19	426	8
Technology support	2,980	13	2,687	10	293	11
General and administrative	5,791	24	7,023	26	(1,232)	(18)
Patent litigation settlement	(2,806)	(12)	(2,846)	(11)	40	(1)
Total operating expenses	11,636	49	12,109	44	(473)	(4)
Operating loss	(2,646)	(11)	(2,702)	(10)	56	(2)
Interest and other income	490	2	821	3	(331)	(40)
Loss before income tax expense	(2,156)	(9)	(1,881)	(7)	(275)	15
Income tax expense (benefit)	48	—	(495)	(2)	543	(110)
Loss from continuing operations	(2,204)	(9)	(1,386)	(5)	(818)	59
Discontinued operations	—	—	778	3	(778)	(100)
Net loss	$ (2,204)	(9)%	$ (608)	(2)%	$ (1,596)	263%

Lead Fees. Lead fees decreased $1.8 million or 7% in first half 2010 compared to first half 2009 and was primarily due to a shift in mix from new and used retail Leads to Manufacturer Leads, which has a lower average sales price per lead. The use of incentives to drive incremental Dealer sign-ups also had a negative impact during the first half 2010. The volume of new and used retail Leads delivered decreased 21%, which was partially offset by an increase in the volume of Leads delivered to Manufacturers and finance Leads delivered of 12% and 23%, respectively, as the automotive consumer credit environment showed signs of recovery in the first half 2010.

Advertising. The $1.6 million or 45% decrease in advertising revenues for first half 2010 compared to first half 2009 was due primarily to the elimination of a large traffic partner in the fourth quarter of 2009 and a decrease in page views.

Cost of Revenues. The $3.0 million or 17% decrease in the cost of revenues in first half 2010 compared to first half 2009 was primarily due to a decrease of $2.3 million in Lead acquisition costs directly related to reduced volume and the change in mix of Leads delivered and a $0.8 million decrease in traffic acquisition costs.

Sales and Marketing. Sales and marketing expense in first half 2010 increased by $0.4 million or 8% compared to first half of 2009 principally due to increased advertising and personnel costs.

Technology Support. Technology support expense in first half 2010 increased by $0.3 million or 11% compared to first half of 2009 due to increased personnel costs.

General and Administrative. General and administrative expense in first half 2010 decreased $1.2 million or 18% compared to first half of 2009 due to the following:

- a decrease in professional fees of $0.7 million, primarily as a result of cost containment initiatives, and
- a decrease in facility costs of approximately $0.2 million.

Dealix Patent Litigation Settlement. In 2004, the Company brought a lawsuit for patent infringement against Dealix Corporation (" **Dealix** "). In December 2006, the Company entered into a settlement agreement with Dealix (" **Settlement Agreement** "). The Settlement Agreement provided for Dealix to pay the Company a total of $20.0 million in settlement payments for a mutual release of claims and a license from the Company to Dealix and its parent company, the Cobalt Group, of certain of the Company's patent and patent applications. On March 13, 2007, the Company received the initial $12.0 million settlement payment with the remainder to be paid out in installments of $2.7 million on the next three anniversary dates of the initial payment. As of June 30, 2010 the Company had received the final annual installment payment of $2.7 million. The Company recorded the payment as patent litigation settlement in the period payment was received, as a reduction to operating expenses. The Company did not have reasonable assurance that it would receive the remaining payment on its due date and therefore had not recorded any amounts receivable related to the Settlement Agreement as of December 31, 2009.

Interest and other income. Interest and other income was $0.5 million in first half 2010 and consisted primarily of patent and international licensing fees recognized through June 30, 2010. Interest and other income was $0.8 million in first half 2009 and primarily represented a gain on the sale of available-for-sale securities and international licensing fees recognized through June 30, 2009.

Income taxes. Income tax expense through June 30, 2010 was $48,000. Through June 30, 2009, the Company recorded an income tax benefit of $495,000. The current year tax expense was primarily related to state taxes in Texas and Michigan. The prior year benefit was due to realization of losses from continuing operations as the operating losses offset gains and taxes attributable to discontinued operations.

Employees

As of July 15, 2010, we had 135 employees. We also use independent contractors as required. None of our employees are represented by labor unions. We have not experienced any work stoppages and consider our employee relations to be generally good.

Liquidity and Capital Resources

The table below sets forth a summary of our cash flows for the six months ended June 30, 2010 and 2009:

	Six Months Ended June 30,	
	2010	2009
	(in thousands)	
Net cash used in operating activities	$ (833)	$ (2,359)
Net cash (used in) provided by investing activities	(489)	1,734
Net cash provided by financing activities	102	—

Our principal sources of liquidity are our cash and cash equivalents balances and litigation settlement proceeds. We entered into the Settlement Agreement with Dealix, which among other things, provided for settlement payments. As of June 30, 2010 we received the final annual installment payment of $2.7 million from Dealix. We continue to have no debt. Our cash and cash equivalents totaled $23.9 million as of June 30, 2010 compared to cash and cash equivalents of $25.1 million as of December 31, 2009.

Net Cash Used in Operating Activities . Net cash used in operating activities in the six months ended June 30, 2010 of $0.8 million resulted primarily from net losses, as adjusted for non-cash charges to earnings, $0.8 million of cash received related to our accounts receivable, partially offset by cash used to reduce accrued liabilities of $1.0 million primarily related to the payment of annual bonus amounts accrued in 2009 and paid in the first half of 2010. Net cash used in operating activities in the six months ended June 30, 2009 was $2.4 million and resulted primarily from net losses and an increase in cash used to reduce accrued expenses and other liabilities of $3.2 million primarily related to severance costs that were accrued as of December 31, 2008 and paid in the first half of 2009, partially offset by cash received related to our accounts receivable of $0.7 million.

Net Cash (Used in)Provided by Investing Activities . Net cash used in investing activities was $0.5 million in the six months ended 2010 and is related to the investment in upgrading our internal information technology (" **IT** ") infrastructure. Net cash provided by investing activities was $1.7 million in the six months ended June 30, 2009. The Company received approximately $1.3 million of the $1.9 million AVV asset sale proceeds held in escrow, that was not recorded on the balance

sheet. Subsequent to the June 30, 2009 balance sheet date, we received a further $0.4 million of the escrow amounts, with the remaining $0.2 million subject to certain contingencies. In addition, we sold all of our available-for-sale investments for cash proceeds of $0.6 million in the six months ended June 30, 2009.

Net Cash Provided by Financing Activities . Our primary source of cash from financing activities is from the exercise of stock options. 226,108 options were exercised for the six months ended June 30, 2010 resulting in $0.1 million of cash inflow. There were no financing activities for the six months ended June 30, 2009. Our future cash flows from employee stock options will depend on the future timing, stock price and amount of stock option exercises, if any.

Off-Balance Sheet Arrangements

At June 30, 2010, we had no off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

Item 3. ***Quantitative and Qualitative Disclosures about Market Risk***

For the three and six months ended June 30, 2010 there were no material changes in the information required to be provided under Item 305 of Regulation S-K from the information disclosed in Item 7A of the Company's Annual Report on Form 10-K for the year ended December 31, 2009.

Item 4T. ***Controls and Procedures***

As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (" **Exchange Act** "). Based on the evaluation, our Chief Executive Officer and our Chief Financial Officer believe that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective at ensuring that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this Quarterly Report on Form 10-Q, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that have materially affected or were reasonably likely to materially affect, our internal control over financial reporting.

The internal controls over the provision for income taxes as of June 30 and September 30, 2009 did not contain specific procedures to address the classification of income taxes, when a loss from continuing operations was present, and other sources of income were also present from discontinued operations and or other comprehensive income (" **Specific Procedures** "). The lack of these specific procedures was a deficiency in our internal controls during the June 30 and September 30, 2009 quarterly periods. The Specific Procedures were included in the control procedures performed as of December 31, 2009, which is what led to the discovery of errors to the quarterly periods ended June 30 and September 30, 2009. We believe that the internal control deficiency had been remediated as of December 31, 2009. The Specific Procedures were included in the quarterly income tax provision review procedures beginning with the first quarter of 2010.

The classification error did not impact our pre-tax losses, net losses, our consolidated balance sheets, or our consolidated statements of cash flows. As such, we do not believe that the errors had a direct impact on our disclosure controls and procedures.

Our management, including our Chief Executive Officer and our Chief Financial Officer, does not expect that our disclosure controls and internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls may be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future

conditions; over time, a control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

See discussion at Part I, Item 1, Note 8, "Commitments and Contingencies – *Litigation* ," to the unaudited consolidated condensed financial statements, which is incorporated by reference herein.

Item 1A. Risk Factors

The following factors, which supplement or update the risk factors set forth in Part I, Item 1A, "Risk Factors" of our 2009 Annual Report on Form 10-K, may affect our future results. The risks described below are not the only risks we face. In addition to the risks set forth in the 2009 Annual Report on Form 10-K, as supplemented or superseded below, additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business.

We are affected by general economic conditions and in particular the automotive industry.

General economic conditions, specifically including the adverse effect of high unemployment on the number of vehicle purchasers and the lack of available consumer credit to finance vehicle purchases have affected the automotive industry, which is currently experiencing what is considered to be the most challenging environment of the past several decades:

- North American vehicle sales remain highly volatile and are expected to track at relatively low levels in 2010,
- Dealer consolidations, closings, and bankruptcies continue, and
- General Motors and Chrysler continue efforts to stabilize their businesses.

If any of our advertising relationships with Manufacturers terminate or decline due to negative marketing conditions redirecting consumer demand (page views) or our advertising rates decline, our revenues will decrease.

We depend on automotive Manufacturers for substantially all of our advertising revenues. The termination of any of these relationships, a decline in the level of advertising with us, reductions in advertising rates or any significant failure to develop additional sources of advertising would cause our revenues to decline, which could have a material adverse effect on our business, results of operations and financial condition. We periodically negotiate revisions to existing agreements and these revisions could decrease our advertising revenues in future periods. A number of our advertising agreements with Manufacturers may be terminated without cause. We may not be able to maintain our relationship with Manufacturers on favorable terms or find alternative comparable relationships capable of replacing advertising revenues on terms satisfactory to us. If we cannot do so, our revenues would decline, which could have a material adverse effect on our business, results of operations and financial condition.

Our common stock could be delisted from the NASDAQ Global Market if we are not able to satisfy continued listing requirements, and if this were to occur, the price of our common stock and our ability to raise additional capital may be adversely affected and the ability to buy and sell our stock may be less orderly and efficient.

Our common stock is currently listed on the NASDAQ Global Market. Continued listing of a security on the NASDAQ Global Market is conditioned upon compliance with various continued listing standards. There can be no assurance that we will continue to satisfy the requirements for maintaining a NASDAQ Global Market listing. The standards for continued listing require, among other things, that the closing minimum bid price for the listed securities be at least $1.00 per share for 30 consecutive trading days. Our common stock has traded below $1.00 per share in 2010, and there can be no assurances made that we will satisfy the $1.00 minimum bid price required for continued listing of our common stock on the NASDAQ Global Market. If our common stock trades below the minimum closing bid requirement for any 30 consecutive trading days, NASDAQ will send us a Deficiency Notice and we will be afforded a 180 day compliance period to regain compliance. If we are unable regain compliance, we will be delisted. If our common stock were to be delisted from the NASDAQ Global Market, the price of our common stock, the ability of holders to sell our stock, and our ability to raise additional capital will likely be adversely affected. If our common stock is delisted and thereafter traded over-the-counter, trading in our stock could

be less efficient. If we sought to re-list our stock on the NASDAQ Global Market, we would be required to comply with all of the initial listing requirements to be re-listed on the NASDAQ Global Market, which in some instances are more stringent than the continued listing requirements.

Our certificate of incorporation and bylaws, tax benefit preservation plan and Delaware law contain provisions that could discourage a third party from acquiring us or limit the price third parties are willing to pay for our stock.

Provisions of our amended and restated certificate of incorporation and bylaws relating to our corporate governance and provisions in our tax benefit preservation plan (" **Tax Benefit Preservation Plan** ") could make it difficult for a third party to acquire us, and could discourage a third party from attempting to acquire control of us. These provisions could limit the price that some investors might be willing to pay in the future for shares of our common stock and may have the effect of delaying or preventing a change in control. The issuance of preferred stock also could decrease the amount of earnings and assets available for distribution to the holders of common stock or could adversely affect the rights and powers, including voting rights, of the holders of the common stock.

Our amended and restated certificate of incorporation allow us to issue preferred stock with rights senior to those of the common stock without any further vote or action by the stockholders. Our amended and restated certificate of incorporation also provides that the board of directors is divided into three classes, which may have the effect of delaying or preventing changes in control or change in our management because less than a majority of the board of directors are up for election at each annual meeting. In addition, provisions in our amended and restated certificate of incorporation and bylaws impose various procedural and other requirements which could make it more difficult for stockholders to effect corporate actions such as a merger, asset sale or other change of control of us.

Under our Tax Benefit Preservation Plan, rights to purchase capital stock of the Company (" **Rights** ") have been distributed as a dividend at the rate of one Right for each share of Common Stock. Each Right entitles its holder, upon triggering of the Rights, to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock of the Company at a price of $8.00 (as such price may be adjusted under the Tax Benefit Preservation Plan) or, in certain circumstances, to instead acquire shares of Common Stock. The Rights will convert into a right to acquire Common Stock or other capital stock of the Company in certain circumstances and subject to certain exceptions. The Rights will be triggered upon the acquisition of 4.90% or more of the Company's outstanding Common Stock or future acquisitions by any existing holders of 4.90% or more of the Company's outstanding Common Stock. If a person or group acquires 4.90% or more of our common stock, all rights holders, except the acquirer, will be entitled to acquire at the then exercise price of a right that number of shares of our common stock which, at the time, has a market value of two times the exercise price of the right.

We are also subject to Section 203 of the Delaware General Corporation Law. In general, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, together with affiliates and associates, owns or did own 15% or more of the corporation's voting stock. Section 203 could discourage a third party from attempting to acquire control of us.

Item 6. Exhibits

3.1	Fifth Amended and Restated Certificate of Incorporation of Autobytel Inc. (formerly Autobytel.com Inc. ("Autobytel" or the "Company")) certified by the Secretary of State of Delaware (filed December 14, 1998), as amended by Certificate of Amendment dated March 1, 1999, Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated July 22, 1999, Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated August 14, 2001, Certificate of Designation of Series A Junior Participating Preferred Stock dated July 30, 2004, and Amended Certificate of Designation of Series A Junior Participating Preferred Stock dated April 24, 2009, which is incorporated herein by reference to Exhibit 3.1 of the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009 filed with the SEC on April 24, 2009 (SEC File No. 000-22239)
3.2	Second Amended and Restated Bylaws of Autobytel dated August 1, 2009, which is incorporated herein by reference to Exhibit 3.2 of the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2009 filed with the SEC on October 23, 2009 (SEC File No. 000-22239)
4.1	Form of Common Stock Certificate of Autobytel is incorporated herein by reference to Exhibit 4.1 of the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001 filed with the SEC on November 14, 2001 (SEC File No. 000-22239)
4.2	Amended and Restated Rights Agreement, dated as of April 24, 2009, between Autobytel and Computershare Trust Company, N.A., successor-in-interest to U.S. Stock Transfer Corporation (which includes the form of Amended Certificate of Designation of the Series A Junior Participating Preferred Stock of Autobytel as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C, which is incorporated herein by reference to Exhibit 4.2 of the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009 filed with the SEC on April 24, 2009 (SEC File No. 000-22239)
4.3	First Amendment to Amended and Restated Rights Agreement, dated May 26, 2010 is incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on June 2, 2010 (SEC File No. 000-22239)
4.4	Tax Benefit Preservation Plan, dated as of May 26, 2010, between Autobytel Inc. and Computershare Trust Company, N.A., as rights agent, together with the following exhibits thereto: Exhibit A – Form of Right Certificate; Exhibit B – Summary of Rights to Purchase Shares of Preferred Stock of Autobytel Inc. is incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC on June 2, 2010 (SEC File No. 000-22239)
10.1	Consulting Services Agreement, effective June 21, 2010, between Autobytel and Mark A. Garms is incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on June 25, 2010 (SEC File No. 000-22239)
10.2	Autobytel Inc. 2010 Equity Incentive Plan is incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed with the SEC on June 25, 2010 (SEC File No. 000-22239)
10.3	Form of Amended and Restated Indemnification Agreement dated as of July 21, 2010 between Autobytel and its officers and directors is incorporated herein by reference to Exhibit 99.1 of the Current Report on Form 8-K filed with the SEC on July 22, 2010 (SEC File No. 000-22239)
10.4*	Form of Officer and Director Indemnification Agreement
31.1*	Chief Executive Officer Section 302 Certification of Periodic Report, dated August 13, 2010.
31.2*	Chief Financial Officer Section 302 Certification of Periodic Report, dated August 13, 2010.
32.1*	Chief Executive Officer and Chief Financial Officer Section 906 Certification of Periodic Report, dated August 13, 2010.

* Filed herewith

SIGNATURES

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

A UTOBYTEL I NC .

By: /s/ Curtis E. DeWalt

Curtis E. DeWalt
Senior Vice President and Chief Financial Officer
(Duly Authorized Officer and Principal Financial Officer)

Date: August 13, 2010

By: /s/ Wesley Ozima

Wesley Ozima
Vice President and Controller
(Principal Accounting Officer)

EXHIBIT INDEX

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* Filed herewith

Exhibit 10.4

AUTOBYTEL INC

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (" ***Agreement*** ") is made and entered into as of _____, 2010, by and between Autobytel Inc., a Delaware corporation (" ***Company*** "), and _____ (" ***Indemnitee*** ").

BACKGROUND

In order to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company and, in part, to induce Indemnitee to continue to provide services to the Company, the Company wishes to provide for indemnification and advancement of expenses to Indemnitee to the maximum extent permitted by law.

The Company's Amended and Restated Bylaws (" ***Bylaws*** ") and the Company's Fifth Amended and Restated Certificate of Incorporation, as amended (" ***Certificate*** "), require that the Company indemnify the directors, officers, employees and other agents of the Company, including persons serving at the request of the Company in those capacities with other corporations or enterprises, as authorized by the General Corporation Law of the State of Delaware, as amended (" ***DGCL*** "), and the Bylaws and the Certificate each expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers, employees and other agents of the Company.

Indemnitee does not believe that the protection currently provided by applicable law, the Bylaws, the Certificate and available insurance may be adequate under the circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protections. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided herein by the Company.

This Agreement is a supplement to, and in furtherance of, the Bylaws, the Certificate and any resolutions adopted pursuant thereto, and must not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

In consideration of Indemnitee's agreement to serve and the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. **Services to the Company.** Indemnitee will serve, at the will of the Company (or its stockholders, as applicable) or under separate contract if any such contract exists, as [_____] or as a director, officer, agent or other fiduciary of an affiliate of the Company, including any subsidiary or employee benefit plan of the Company (each, an " ***Affiliate*** "), to the best of Indemnitee's ability so long as Indemnitee remains in such position(s); *provided, however,* that (i) Indemnitee may at any time and for any reason resign from such position(s) (subject to any contractual obligation that Indemnitee may have assumed apart from this Agreement or any obligation imposed by operation of law), and (ii) neither the Company nor any Affiliate have any obligation under this Agreement to continue Indemnitee in any such position(s). This Agreement is not an employment contract between the Company (or any of its Affiliates) and Indemnitee. Nothing in this Agreement may be construed or interpreted as giving Indemnitee any right to be retained in the employ of the Company (or any of its Affiliates). Indemnitee specifically acknowledges and agrees that except as may be provided in a written employment contract between Indemnitee and the Company or an Affiliate: (i) Indemnitee's employment with the Company or any of its Affiliates is at-will, and (ii) Indemnitee may be discharged at any time for any reason. The foregoing notwithstanding, this Agreement will continue in force after Indemnitee has ceased to serve as [_____] of [the Company/name of Affiliate].

2. **Indemnity of Indemnitee.** The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent authorized or permitted by the provisions of the Bylaws, the Certificate, the DGCL or other applicable law. The phrase "to the fullest extent authorized or permitted" includes to the fullest extent authorized or permitted by any amendments or replacements of the Bylaws, the Certificate, or the DGCL (or other applicable law) adopted or enacted after the date of this Agreement that increase the extent to which a corporation may indemnify its directors, officers, employees or agents.

3. **Additional Indemnity.** In addition to, and not in limitation of, the indemnification otherwise provided for herein, and subject only to the exclusions set forth in Section 4 hereof, the Company hereby further agrees to hold harmless and indemnify Indemnitee against any and all Expenses (as defined below) that Indemnitee becomes legally obligated to pay because of any claim or claims made against or by Indemnitee in connection with any threatened, pending or completed action, suit or proceeding whether by or in the right of the Company or otherwise and whether civil, criminal, legislative, arbitrational, administrative or investigative, and whether formal or informal including any appeal therefrom, to which Indemnitee is, was or at any time becomes a party, potential party, or a participant, including as a non-party witness or otherwise, or is threatened to be made a party, by reason of the fact that Indemnitee is, was or at any time becomes a director, officer, employee or other agent of the Company, or is or was serving, or at any time serves at the request of, the Company or any Affiliate as a director, officer, employee or other agent (including a trustee, partner or manager) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, including an Affiliate (collectively, a " ***Proceeding*** "), in each case whether or not Indemnitee was serving in that capacity at the time any liability or Expense is incurred. The definition of "Proceeding" must be considered met if Indemnitee in good faith believes the situation might lead to or culminate in the institution of a Proceeding. " ***Expenses*** " mean all expenses, including attorneys'

fees, witness fees, fees of experts, forensic consultants and other professionals, retainers, court costs, travel expenses, photocopying, printing and binding costs, telephone charges, and any other cost, disbursement or expense customarily incurred in connection with defending, prosecuting, preparing to prosecute or defend, investigating, being prepared to be a witness in, responding to a subpoena or other discovery request, or otherwise participating in, a Proceeding, damages, penalties, interest charges thereon, judgments, fines, and amounts paid in settlement, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties imposed on Indemnitee, costs associated with any appeals, including without limitation the premium, security for, and other costs relating to any costs bond, supersedeas bond, or other appeal bond or its equivalent, and any other amounts for time spent by Indemnitee for which Indemnitee is not compensated by the Company or any Affiliate or third party for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any Affiliate. Without limiting the generality of the foregoing, references to "serving at the request of the Company as a director, officer, employee or agent" includes: (i) Indemnitee's performance of services for, on behalf of, or for the benefit of the Company or any Affiliate while Indemnitee is serving as a director, officer, employee or other agent of the Company or an Affiliate regardless of whether Indemnitee is at the time a director, officer or employee of the Company or the Affiliate for, on behalf of, or for the benefit of which Indemnitee performed services; or (ii) any service by Indemnitee that imposes duties on, involves services by, Indemnitee with respect to an employment benefit plan, its participants or beneficiaries, including as a deemed fiduciary thereto.

4. **Limitations on Additional Indemnity.** No indemnity pursuant to Sections 2 or 3 hereof must be paid by the Company:

(a) On account of any claim against Indemnitee solely for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) (" ***Section 16(b)*** ") of the Exchange Act of 1934, as amended (" ***Exchange Act*** "), or similar provisions of any federal, state or local statutory law; *provided*, that with respect to a claim against Indemnitee solely for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) or similar provisions of any federal, state or local law, Indemnitee is entitled to the advancement of legal expenses unless the Company reasonably determines that Indemnitee clearly violated Section 16(b) and must disgorge profits to the Company pursuant to the terms thereof. Notwithstanding anything to the contrary stated or implied in this Section 4(a), indemnification pursuant to this Agreement relating to any Proceeding against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) or similar provisions of any federal, state or local laws is not prohibited if Indemnitee ultimately establishes in any Proceeding that no recovery of such profits from Indemnitee is permitted under Section 16(b) or similar provisions of any federal, state or local laws;

(b) On account of any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of

(c) the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (" ***Sarbanes-Oxley Act*** "), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), *provided* , Indemnitee is entitled to advancement of Expenses related to, arising out of, or resulting from a a Proceeding to recover such compensation or profits prior to the final adjudication of that Proceeding;

(d) on account of Indemnitee's conduct that is established by a final judgment, not subject to appeal, as knowingly fraudulent or deliberately dishonest or that constituted willful misconduct;

(e) on account of Indemnitee's conduct that is established by a final judgment, not subject to appeal, as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee was not legally entitled;

(f) for which payment is actually made to Indemnitee under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement, except in respect of any excess beyond payment under such insurance, clause, bylaw or agreement and such payment fully compensates Indemnitee against all expenses. Notwithstanding anything to the contrary stated or implied in this Section 4 (e), (i) Indemnitee has no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple persons possessing those obligations to Indemnitee prior to the Company's satisfaction and performance of its obligations under this Agreement; and (ii) the Company must perform fully its obligations under this Agreement regardless of whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

(g) if indemnification is not lawful, as established by the Company by a final judgment on such issue not subject to appeal; or

(h) in connection with any Proceeding (or part thereof) initiated by Indemnitee, or any Proceeding by Indemnitee against the Company or an Affiliate or the directors, officers, employees or other agents of the Company or an Affiliate, unless (i) such indemnification is expressly required to be made by law, (ii) the Proceeding was authorized by the Company's Board of Directors (" ***Board*** "), (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested in the Company under the DGCL or any other applicable law, (iv) the Proceeding is initiated pursuant to Section 10 hereof, or (v) the Proceeding initiated by Indemnitee is a cross-claim or counter-claim.

5. **Continuation of Indemnity.** All agreements and obligations of the Company contained herein continue during the period Indemnitee is a director, officer, employee or other agent of the Company (or is or was serving at the request of the Company as a director, officer, employee or other agent (including trustee, partner or manager) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise) and will continue thereafter so long as Indemnitee is subject to any Proceeding by reason of the fact that Indemnitee was serving in the capacity referred to herein.

6. **Partial Indemnification.** The Company will indemnify Indemnitee for a portion of the Expenses that Indemnitee becomes legally obligated to pay in connection with any Proceeding even if not entitled hereunder to indemnification for the total amount thereof, and the Company must indemnify Indemnitee for the portion thereof to which Indemnitee is entitled and the acceptance of such partial payment will not be an admission by Indemnitee that he or she is not entitled to all of his or her Expenses or a bar against Indemnitee seeking recovery of the full amount of Expenses.

7. **Notice and Other Indemnification Procedures.**

(a) **Notification of Proceeding.** Indemnitee agrees to notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation that it may have to Indemnitee under this Agreement or otherwise and any delay in giving notice will not constitute a waiver by Indemnitee of any rights under this Agreement.

(b) **Request for Indemnification and Indemnification Payments.** Upon written request by Indemnitee for indemnification, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto must be made in the specific case: (i) if a Change in Control (as defined in Section 8(b)) shall have occurred, by Independent Counsel (as defined below) in a written opinion to the Board, a copy of which must be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors (as defined below), even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which must be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee must be made promptly, but in no event more than ten (10) days after such determination. Indemnitee agrees to cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by or on behalf of Indemnitee in so cooperating with the person, persons or entity making such determination must be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company must advise Indemnitee promptly in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. Claims for advancement of Expenses must be made under the provisions of Section 9 of this Agreement.

In the event the determination of entitlement to indemnification is to be made by Independent Counsel, the Independent Counsel must be selected as provided in this Section 7(b). If a Change in Control shall not have occurred, the Board must select the

Independent Counsel, and the Company must give prompt, written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, Indemnitee must select the Independent Counsel (unless Indemnitee requests that the selection be made by the Board, in which event the preceding sentence applies), and Indemnitee must give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection has been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to the selection; *provided, however* , that the objection may be asserted only on the basis that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined below, and the objection must set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If a written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until the objection is withdrawn or the Delaware Court of Chancery has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification and the final disposition of the Proceeding, no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court of Chancery for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by that court or by such other person as that court may designate, and the person with respect to whom all objections are so resolved or the person so appointed will act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses, including any retainer or advance, of the Independent Counsel referred to above and to indemnify such counsel fully against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. " **Disinterested Director"** means a director of the Company who is not, and was not, a party to the Proceeding in respect of which indemnification is sought by Indemnitee. " **Independent Counsel** " means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, any Affiliate or Indemnitee in any matter material to any such person (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(c) **Notice to Insurers.** If, at the time of the receipt by the Company of a notice pursuant to Section 7(a) hereof, the Company has liability insurance in effect which may cover that Proceeding, the Company must give prompt notice of the commencement of that Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company must thereafter take all necessary or desirable action to cause those insurers to pay, on behalf of Indemnitee, all Expenses payable to Indemnitee in respect of such Proceeding in accordance with the terms of their policies, but any such action by the Company will not relieve it of its obligations hereunder.

(d) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement may be required to be made prior to the final disposition of the Proceeding as to Indemnitee.

8. **Assumption of Defense.**

(a) In the event the Company is requested by Indemnitee to pay the Expenses of any Proceeding, the Company, if appropriate, will be entitled to assume the defense of that Proceeding, or to participate to the extent permissible in that Proceeding, with counsel approved by Indemnitee, which approval may not be unreasonably withheld or delayed. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding; *provided*, that Indemnitee will have the right to employ separate counsel in that Proceeding at Indemnitee's sole cost and expense. After the Company has assumed the defense of a Proceeding, Indemnitee will be entitled to, at Indemnitee's own expense, engage counsel for the purpose of monitoring the defense being provided by counsel retained by the Company, and the Company must direct that counsel to cooperate with and provide requested information to Indemnitee's monitoring counsel. Notwithstanding the foregoing, if (i) Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any defense in the Proceeding, (ii) the Company has not, in fact, employed counsel or otherwise actively pursued the defense of the Proceeding within a reasonable time, or thereafter reasonably maintained the defense of the Proceeding, (iii) there has been a Change in Control (as defined below), or (iv) Indemnitee reasonably concludes that counsel engaged by the Company on behalf of Indemnitee may not adequately represent Indemnitee, then in any such event the fees and expenses of Indemnitee's counsel to defend the Proceeding must be at the expense of the Company and subject to the indemnification and advancement of expenses provisions of this Agreement. *Provided, however*, that in the event there are other defendants in a Proceeding who are entitled to counsel other than counsel engaged by the Company, the Company will only be obligated to pay the fees and expenses of one (1) counsel for all those defendants, including Indemnitee, unless Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest that would prevent one (1) counsel from representing all such defendants, including Indemnitee.

(b) For purposes of this Agreement, a " ***Change in Control*** " is deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, (A) who is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing ten percent (10%) or more of the combined voting power of the Company's then outstanding Voting Securities (as defined below), increases his, her or its beneficial ownership of such securities by five percent (5%) or more over the percentage so owned by such person, or (B) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than twenty percent (20%) of the

(c) total voting power represented by the Company's then outstanding Voting Securities, (ii) during any period of two (2) consecutive years, individuals who at the beginning of that period constitute the Board and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the Company merges or consolidates with any other corporation other than 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, or its ultimate parent) at least sixty percent (60%) of the total voting power represented by the Voting Securities, as defined below, of the Company or such surviving entity, or its ultimate parent, outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one (1) transaction or a series of transactions) all or substantially all of the Company's assets, (iv) the Company commences any case, action or proceeding before any court or governmental body (or a third party commences any such proceeding that remains undismissed by or consented to within sixty (60) days) relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (v) the Company commences any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors.

(d) For purposes of this Agreement, " ***Voting Securities*** " means any securities of the Company that vote generally in the election of directors.

(e) Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Proceeding or in the defense of any claim, issue or matter therein, the Company must indemnify Indemnitee against all Expenses incurred by Indemnitee in connection therewith.

9. **Advances of Expenses.**

(a) The Company will advance to Indemnitee, prior to the final adjudication of any Proceeding of this Agreement, any and all Expenses relating to, arising out of or resulting from any Proceeding (other than a Proceeding for which indemnification is excluded pursuant to Section 4(g)) paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee. The right to advances under this Section 9 in all events continues until final disposition of any Proceeding, including all possible appeals therefrom. Advances must be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances must be unsecured and interest free. Advances include any and all reasonable Expenses incurred in pursuing an action to enforce this right of advancement, including Expenses incurred in preparing and forwarding statements to the Company or its insurance carrier(s) to support the advances claimed.

(b) Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within fifteen (15) business days after any request by Indemnitee, the Company must, in accordance with such request (but without duplication), (i) pay such Expenses on behalf of Indemnitee, (ii) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (iii) reimburse Indemnitee for such Expenses.

(c) Indemnitee undertakes to the fullest extent permitted by law to repay the amounts advanced pursuant to this Agreement (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified therefor by the Company. No other form of undertaking may be required other than the execution of this Agreement.

(d) Indemnitee must use commercially reasonable efforts to provide documentation to the Company relating to Expenses as incurred in order to permit the Company to properly deduct the advancement of Expenses pursuant to this Section 9; *provided, however,* that Indemnitee will only be required to provide such documentation to the extent that such provision will not constitute a waiver of the attorney-client privilege or the work product doctrine.

10. **Enforcement; Presumption of Entitlement.**

(a) Any right to indemnification or advances granted by this Agreement to Indemnitee is enforceable by or on behalf of Indemnitee in any court of competent jurisdiction if (i) the claim for indemnification is denied, in whole or in part; (ii) no disposition of such claim is made within seventy (70) days of request therefor; (iii) payment of indemnification is not made to Indemnitee within ten (10) days of a determination that Indemnitee is entitled to indemnification; (iv) advancement of Expenses is not timely made; or (v) the Company or any other person takes or threatens to take action to declare this Agreement unenforceable or institutes litigation or other action or proceeding to deny or recover from Indemnitee the benefits provided by, or intended to be provided by, this Agreement. Indemnitee, in such enforcement action, if successful in whole or in part, must be entitled to be paid also the Expenses of prosecuting Indemnitee's claim. The Company must pay interest at the legal rate under Delaware law on all amounts that the Company is obligated to advance or indemnify pursuant to this Agreement, commencing on the date on which the Company must advance Expenses or the earlier of the date of determination of indemnification or seventy (70) days of a request therefor and ending on the date on which payment is made.

(b) It is a defense to any action for which a claim for indemnification is made under Sections 2 and 3 hereof (other than an action brought to enforce a claim for Expenses pursuant to Section 8 hereof) that Indemnitee is not entitled to indemnification because of the limitations set forth in Section 4 hereof.

(c) In any such Proceeding instituted by Indemnitee pursuant to this Section 10, the Company must be precluded, to the fullest extent permitted by law, from asserting that the procedures and presumptions of this Agreement are not valid, binding and enforceable and must stipulate in any such court that the Company is bound by all the provisions of this Agreement and is precluded from making any assertion to the contrary.

(d) In making any determination concerning Indemnitee's right to indemnification, it must be presumed that Indemnitee has satisfied the applicable standard of conduct, and to the fullest extent not prohibited by law, the Company has the burden of proof to overcome that presumption by its adducing clear and convincing evidence to the contrary. Neither the failure of the Company (including the Disinterested Directors, the Company's stockholders, or Independent Counsel) to have made a determination prior to the commencement of such enforcement action that indemnification of Indemnitee is proper in the circumstances, nor an actual determination by the Company (including the Disinterested Directors, the Company's stockholders, or Independent Counsel) that such indemnification is improper is a defense to the action or creates a presumption that Indemnitee is not entitled to indemnification under this Agreement or otherwise. Any judicial proceeding must be conducted in all respects as a trial *de novo* on the merits and Indemnitee must not be prejudiced by any actual determination by the Company any assertion to the contrary.

(e) For purposes of any determination of good faith, Indemnitee must be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Company or any Affiliate, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company or any Affiliate in the course of their duties, or on the advice of legal counsel for the Company or an Affiliate or on information or records given or reports made to the Company or an Affiliate by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 10(e) must not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. Whether or not the foregoing provisions of this Section 10(e) are satisfied, it must in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company.

(f) Subject to Section 7(d), if a determination of whether Indemnitee is entitled to indemnification is not made within forty (40) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification must, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee must be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; *provided, however* , that such 40-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and *provided* , *further,* that the foregoing provisions of this Section 10(f) do not apply (i) if the determination of entitlement to indemnification is to be made by the and if (A) within ten (10) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within sixty (60) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within ten (10) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii)

(g) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(a) of this Agreement.

(h) The remedies provided for in this Section 10 are in addition to any other remedies available to Indemnitee at law or in equity or pursuant to the Certificate, the Bylaws or other written agreement between the Company and Indemnitee.

11. **Unauthorized Settlements.** Any provision herein to the contrary notwithstanding, the Company is not obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding effected by Indemnitee without the Company's written consent. Further, the Company must not, without the prior written consent of Indemnitee, effect any settlement of: (a) any Proceeding if Indemnitee is or could have been a party, or (b) any Proceeding in which the Company is, or could be, jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement solely involves the payment of money and includes a complete and unconditional release of Indemnitee from all liability on any claims that are the subject matter of such Proceeding. Neither the Company nor Indemnitee may unreasonably withhold, delay or condition consent to any proposed settlement; *provided, however*, that: (i) the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such Proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders, and (ii) Indemnitee may withhold consent to any settlement that does not provide a complete and unconditional release of Indemnitee requires Indemnitee to take any action other than executing a release of parties providing a release of Indemnitee, or imposes any penalty or other limitation or disqualification on Indemnitee. The Company must notify Indemnitee promptly of the receipt of any settlement offer or if it intends to submit a settlement offer and must provide Indemnitee a reasonable time to consider the offer.

12. **Mutual Acknowledgment.** Both the Company and Indemnitee acknowledge that in certain instances, Federal or state law or applicable public policy may prohibit the Company from indemnifying its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

13. **Period of Limitations.** No legal action may be brought and no cause of action may be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, and any claim or cause of action of the Company will be extinguished and deemed released unless asserted by the timely filing of a legal action within such two (2)-year period; *provided, however,* that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period must govern.

14. **Subrogation.** In the event of payment under this Agreement and after Indemnitee has no more Expenses in respect of a Proceeding, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who must execute all documents required

and must do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

15. **Non-Exclusivity of Rights.** The rights conferred on Indemnitee by this Agreement are not exclusive of any other right which Indemnitee may have or hereafter acquire under any statute, provision of the Certificate or the Bylaws, each as may be amended from time to time, agreement, vote of stockholders or directors, or otherwise.

16. **Survival of Rights; Change in Control.**

(a) The rights conferred on Indemnitee by this Agreement continue after Indemnitee has ceased to be a director, officer, employee or other agent of the Company or to serve at the request of the Company as a director, officer, trustee, fiduciary, partner, manager, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and will inure to the benefit of Indemnitee's heirs, executors and administrators.

(b) The Company must require and cause any successor thereto (whether direct or indirect) in connection with a Change in Control, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such Change in Control occurred.

17. **Contribution.**

(a) If the indemnification provided for by this Agreement is unavailable in whole or in part and may not be paid to Indemnitee for any reason other than those set forth in Section 4 hereof, then in respect to any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), to the fullest extent permissible under applicable law, the Company, in lieu of indemnifying and holding harmless Indemnitee, must pay, in the first instance, the entire amount of Expenses incurred by Indemnitee in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company hereby agrees to indemnify and hold harmless fully to the extent permissible under applicable law Indemnitee from any claims for contribution that may be brought by officers, directors or employees of the Company (other than Indemnitee) who may be jointly liable with Indemnitee.

18. **Liability Insurance.**

(a) For the duration of Indemnitee's service as a director and/or officer of the Company, and thereafter for so long as Indemnitee may be subject to any pending or possible indemnifiable claim, the Company must use best efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to cause to be maintained in effect policies of directors' and officers' liability insurance, errors and omissions insurance and employment practices insurance providing coverages for directors and/or officers of the Company that are at least substantially comparable in scope and amount to that provided by the

(b) Company's current policies covering directors and officers. The minimum AM Best rating for the insurance carriers of such insurance must be not less than A-VI.

(c) In the event of a Change in Control, the Company must (i) maintain in force any and all insurance policies then maintained by the Company providing liability insurance in respect of Indemnitee, or (ii) require and cause any successor thereto (whether direct or indirect) to obtain and maintain a directors' and officers' liability insurance policy (and any other liability insurance policies, including errors and omissions and employment practices, to the extent such liability policies were claims-made policies immediately prior to the Change in Control) that provides coverage for Indemnitee that is at least substantially comparable in scope and amount to that provided to Indemnitee by the Company as of immediately prior to the Change in Control, in each case for the six-year period immediately following the Change in Control. This "tail coverage" must be placed by the Company's insurance broker and be placed with a carrier or carriers having an AM Best rating that is not less than A-VI.

(d) In the event that any action is instituted by Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, Indemnitee is entitled to be paid all Expenses incurred by Indemnitee with respect to that action, regardless of whether Indemnitee is ultimately successful in that action, and is entitled to the advancement of Expenses with respect to that action, unless as a part of that action a court of competent jurisdiction over that action determines that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous.

(e) The Company must make available to Indemnitee a copy of all applications, binders, policies, declarations, endorsements and other related materials in respect of policies required to be obtained or maintained pursuant to this Agreement. The Company must not discontinue or significantly reduce the scope or amount of coverage from one (1) policy period to the next without the prior approval thereof by a majority vote of the incumbent directors of the Company, even if less than a quorum. The Company must provide Indemnitee with at least thirty (30) days notice of the non-renewal of, cancellation of or failure to pay any premium due in respect of such insurance policies.

19. **Optional Trust.** The Company may, but is not required to, create a trust fund, grant a security interest or use other means, including without limitation a letter of credit, to ensure the payment of such amounts as may be necessary to satisfy its obligations to indemnify and advance Expenses pursuant to this Agreement.

20. **No Imputation.** The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Company or the Company itself must not be imputed to Indemnitee for purposes of determining any rights under this Agreement.

21. **Severability.** The provisions of this Agreement are severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions, including without limitation in the same section, paragraph or sentence, must remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent

possible, the provisions of this Agreement (including, without limitations, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) must be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

22. **Coverage.** This Agreement applies with respect to Indemnitee's service as [_____] of the Company prior to the date of this Agreement.

23. **Governing Law.** This Agreement and the relationship of the parties hereto with respect to the subject matter hereof are governed by and construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents, entered into and to be performed entirely within the State of Delaware, without regard to the conflict of laws principles thereof.

24. **Amendment and Termination.** No amendment, modification, termination or cancellation of this Agreement is effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement may be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor may such waiver constitute a continuing waiver.

25. **Identical Counterparts; Facsimile.** This Agreement may be executed in one (1) or more counterparts, including counterparts transmitted by facsimile or other electronic communication, each of which shall for all purposes be deemed to be an original but all of which together constitute but one (1) and the same Agreement. Only one (1) such counterpart need be produced to evidence the existence of this Agreement. Facsimile signatures, or signatures delivered by other electronic transmission, are as effective as original signatures.

26. **Headings.** The headings of the sections of this Agreement are inserted for convenience only and must not be deemed to constitute part of this Agreement or to affect the construction hereof.

27. **Construction of Certain Phrases.**

(a) For purposes of this Agreement, references to the "Company" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee will stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprise" includes employee benefit plans; references to "fines" includes any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the

Company" includes any service as a director, officer, employee, agent or fiduciary of the Company that imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee must be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

28. **Notices.** All notices and other communications required or permitted hereunder must be in writing, shall be effective when given, and must in any event be deemed to be given (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand or by electronic transmission, (c) one (1) business day after the business day of deposit with overnight courier, freight prepaid, or (d) one (1) day after the business day of delivery by facsimile transmission with answer-back received, if delivered by facsimile transmission, with copy by first class mail, postage prepaid, and must be addressed if to Indemnitee, at Indemnitee's address as set forth beneath Indemnitee's signature to this Agreement and if to the Company at the address of its principal corporate offices (attention: secretary) or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto.

29. **Consent to Jurisdiction.** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the Courts of Chancery of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement must be commenced, prosecuted and continued only in that Court, which is the exclusive and only proper forum for adjudicating such a claim

30. **Equitable Relief.** The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the Company and Indemnitee agree that Indemnitee may enforce this Agreement by seeking equitable remedies, including injunctive relief and/or specific performance, without any showing of actual damage or irreparable harm and that by seeking equitable remedies, Indemnitee will not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee is entitled to such equitable remedies without the necessity of posting bonds or other undertaking in connection therewith. The Company hereby waives any requirement of a bond or other undertaking.

31. **Integration and Entire Agreement.** This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto; *provided, however,* that this Agreement is a supplement to and in furtherance of the Certificate, the Bylaws, the DGCL and any other applicable law, and must not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

AUTOBYTEL INC

By: _____
Glenn E. Fuller
Executive Vice President, Chief Legal
and Administrative Officer and Secretary

INDEMNITEE

Name: _____
Print Name: _____
Address: _____
_____
_____

Exhibit 31.1

CERTIFICATION

I, Jeffrey H. Coats, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2010

/s/ Jeffrey H. Coats

Jeffrey H. Coats
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Curtis E. DeWalt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2010

/s/ Curtis E. DeWalt

Curtis E. DeWalt
Senior Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Autobytel Inc. (the " *Company* ") on Form 10-Q for the period ended June 30, 2010 (the " *Report* "), we, Jeffrey H. Coats, President and Chief Executive Officer of the Company, and Curtis E. DeWalt, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange

   Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Jeffrey H. Coats

Jeffrey H. Coats
President and Chief Executive Officer
August 13, 2010

/s/ Curtis E. DeWalt

Curtis E. DeWalt
Senior Vice President and Chief Financial Officer
August 13, 2010

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to Autobytel Inc. and will be retained by Autobytel Inc. and furnished to the Securities and Exchange Commission or its staff upon request.