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

FORM 10-K

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

For the fiscal year ended December 31, 2008

x 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 33-0711569
(State of Incorporation) (I.R.S. Employer Identification No.)

18872 MacArthur Boulevard, Suite 200
Irvine, California 92612-1400
(Address of principal executive offices) (Zip Code)

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

Common Stock, par value $0.001 per share The NASDAQ Global Market
Title of Class Name of exchange on which registered

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

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

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

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or Section 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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☑ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

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

Based on the closing sale price of $1.42 for our common stock on The NASDAQ Global Market on June 30, 2008, the aggregate market value of outstanding shares of common stock held by non-affiliates was approximately $61 million.

As of February 28, 2009, 45,219,679 shares of our common stock were outstanding.

Documents Incorporated by Reference

Portions of our Definitive Proxy Statement for the 2009 Annual Meeting, expected to be filed within 120 days of our fiscal year end, are incorporated by reference into Part III of this Annual Report on Form 10-K.
Table of Contents

Autobytel Inc.

ANNUAL REPORT ON FORM 10-K
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2008

Page

Part I

Item 1 Business 1
Item 1A Risk Factors 8
Item 1B Unresolved Staff Comments 19
Item 2 Properties 19
Item 3 Legal Proceedings 19
Item 4 Submission of Matters to a Vote of Security Holders 19

Part II

Item 5 Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities 20
Item 6 Selected Consolidated Financial Data 22
Item 7 Management’s Discussion and Analysis of Financial Condition and Results of Operations 23
Item 7A Quantitative and Qualitative Disclosures About Market Risk 35
Item 8 Financial Statements and Supplementary Data 36
Item 9 Changes in and Disagreements With Accountants on Accounting and Financial Disclosure 36
Item 9A Controls and Procedures 37
Item 9B Other Information 39

Part III

Items 10 Directors, Executive Officers and Corporate Governance 40
Items 11 Executive Compensation 40
Items 12 Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters 40
Items 13 Certain Relationships and Related Transactions, and Director Independence 40
Items 14 Principal Accountant Fees and Services 40

Part IV

Item 15 Exhibits and Financial Statement Schedules 41
Signatures 42
FORWARD-LOOKING STATEMENTS

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 Annual Report and our proxy statement, parts of which are incorporated herein by reference, contain such forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as “anticipate,” “estimate,” “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, new product expectations and capabilities, and our outlook regarding our performance and growth are forward-looking statements. This Annual Report 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. Important factors that could cause actual results to differ materially from those reflected in forward-looking statements made in this Annual Report are set forth under “Item 1A. Risk Factors.” 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.

Item 1. Business

Autobytel Inc. was incorporated in 1996 under the laws of the State of Delaware. Unless specified otherwise, as used in this Annual Report on Form 10-K, the terms “we,” “us,” “our,” the “Company” or “Autobytel” refer to Autobytel Inc. and its subsidiaries.

Overview

We are an automotive marketing services company that assists automotive dealers and manufacturers sell automobiles. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and online advertising, we provide automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. We purchase from third parties and generate from our own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing (these consumer internet requests are referred to in this Annual Report on Form 10-K as “Leads”). We sell the Leads primarily to our automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites, such as Edmunds, AOL, Kelley Blue Book, and Yahoo, (“Network Websites”). These Network Websites provide substantially all of our Leads. Additionally, we own and operate consumer-facing automotive websites, including Autobytel.com®, Autoweb.com®, AutoSite.com®, Car.com®®, CarSmart.com®,
CarTV.com®, and MyRide.com® that provide consumers with information and tools to aid them with their automotive purchase decisions. Our owned websites provide a small percentage of our Leads but provide a significant portion of our page views for the advertising component of our business. In addition to advertising on our websites, we provide advertising opportunities for automotive manufacturers and other automotive advertisers through our marketing network, which includes our AutoReach advertising network (“Ad Network”) and co-branded websites, such as ESPN.com. We conduct our business within the United States and within one business segment which is defined as providing automotive and marketing services.

Available Information

Our corporate website is located at www.autobytel.com. Information on our website is not incorporated by reference in this Annual 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 such 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.

Significant Business Developments

Change in Strategic Emphasis

We have decided to focus on our core Leads business and place less emphasis on a media-centric advertising-driven business model. This shift in emphasis is the result of our strategic evaluation of the unfavorable macro-economic and automotive industry market conditions experienced during 2008, which are expected to continue during 2009.

Cost Reduction Initiatives

In late 2007, we began a series of expense reduction initiatives that were intended to better align our operating costs with our declining revenues. This involved reducing the number of employees by 63 beginning in the fourth quarter 2007 through the second quarter 2008, and an additional 116 employees in the second half of 2008. Since the inception of these cost reduction initiatives, we have eliminated approximately 60% of our work-force from continuing operations. During this timeframe, we also significantly reduced our use of consultants and temporary labor in an effort to further reduce costs.

Changes to Executive Management

Consistent with our change in strategic emphasis and cost reduction initiatives, a number of our executives either resigned or were terminated from the Company in 2008, including our former Chief Executive Officer, James Riesenbach. Effective on February 28, 2009 we also terminated the employment of our former Chief Financial Officer, Monty Houdeshell. Jeffrey Coats, a member of the Board of Directors, was appointed as our President and Chief Executive Officer on December 12, 2008. Mark Garms, the Company’s Senior Vice President of Dealer Operations, was named the Company’s Executive Vice President and Chief Operating Officer effective January 19, 2009. Curtis DeWalt, the Company’s Senior Vice President, Finance and Controller, was appointed to the position of Senior Vice President and Chief Financial Officer and Wesley Ozima, the Company’s Director of Corporate Accounting, was appointed to the position of Vice President and Controller, both effective March 1, 2009.

Engagement of RBC Capital Markets as a Financial Advisor

In August 2008, we engaged RBC Capital Markets Corporation (“RBC”), an investment banking firm, to act as a financial advisor and to assist us in exploring and evaluating strategic alternatives to maximize shareholder value, including the possible sale of the Company or certain of its assets. In January 2009, we announced that we had ended our evaluation of a possible sale of the Company and would continue to evaluate other strategic alternatives with RBC. In arriving at its decision, our Board of Directors concluded that shareholder value would not be maximized by a sale of the Company in the current economic environment.
Sale of Non-Core Assets

On January 23, 2008, we completed the sale of certain assets and liabilities of our AVV, Inc. data extraction and customer relationship management software business to Dominion Enterprises 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 first quarter of 2008.

Basis of Presentation

We sold certain assets and liabilities of our Automotive Information Center ("AIC") data operations on January 31, 2007; sold our wholly-owned subsidiary, Retention Performance Marketing, Inc., ("RPM") on June 30, 2007; and sold certain assets and liabilities of its AVV Inc. ("AVV") business on January 23, 2008, collectively the "Divestitures." Accordingly, the Divestitures are presented in the consolidated financial statements as discontinued operations. As discontinued operations, revenues and expenses of the Divestitures are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs of the Divestitures that will be eliminated from future operations. Unless stated otherwise, all amounts in this Annual Report on Form 10-K are presented net of discontinued operations.

Industry Background

The internet has been rapidly adopted by consumers for their vehicle purchasing process, primarily because it has become the best method to easily find the information necessary to make an informed and confident buying decision. Additionally, the internet has become a tool for consumers to begin communicating with local automotive dealers regarding vehicle pricing, availability, options, and financing. As many consumers have moved to the internet as a primary vehicle research and shopping tool, many automotive dealers and manufacturers have used it as an efficient way to reach those consumers through marketing programs.

Summary of Services

We believe that our automotive marketing services improve the vehicle purchasing process for consumers, automotive dealers ("Dealers"), and automotive manufacturers ("Manufacturers"). For Dealers, we provide efficient marketing programs, sending them Leads, which we obtain primarily by purchasing them through Network Websites. Manufacturers also participate in our Lead programs and our display advertising programs. For consumers who use our Lead programs, we provide at no cost an easy way to obtain valuable information to assist them in their vehicle shopping process. These requests may be submitted on Network Websites as well as our websites. For consumers using our websites, we provide research information on new and used vehicles that they may be interested in purchasing and additional tools to assist them in this process.

Services to Dealers. Our Lead and advertising programs generally reduce incremental marketing costs and increase the sales volume of Dealers. Our Dealers usually spend considerably less in marketing costs on each vehicle sold by using our Lead and advertising programs than through traditional forms of marketing, such as print, television and radio advertising.

Services to Manufacturers. Manufacturers can participate in our Leads programs, which connect potential customers who are interested in the Manufacturers’ makes and models of vehicles, to Dealers in the potential customers’ local areas. Additionally, Manufacturers can influence car buyers’ decisions by utilizing display advertising on our websites and websites in our marketing network. Finally, Manufacturers can reach potential customers through our direct marketing programs, reaching consumers that are in the market for a vehicle, through e-mail and direct mail programs.

Services to Consumers. Consumers have shown a preference for independent third-party websites and a preference for using the internet for their vehicle shopping experience. Many consumers also prefer to obtain pricing and availability and financing information from one or more local Dealers prior to visiting a dealership location. The consumer can accomplish this quickly and easily and at no cost by submitting a Lead through Network Websites or our own websites. Our websites provide a large quantity of quality auto related information, providing consumers with up-to-date vehicle specifications, vehicle safety features, and vehicle pricing information. In addition, consumers have access to valuable automotive shopping tools, such as a loan calculator to determine monthly payments, and other helpful information, to make a vehicle lease or purchase decision. Our database of articles allows consumers to perform on-line research by accessing documents, such as consumer and professional reviews, and other analysis. Various automotive information service providers, such as Kelley Blue Book, are also available on our websites to assist consumers with specific vehicle information, such as the trade-in value of their current vehicle. With this information, the consumer is aided in making an informed and intelligent vehicle acquisition decision.
Strategy

Our goal is to garner a share of the billions of dollars spent annually by Dealers and Manufacturers on automotive marketing services. We plan to achieve this objective through the following principal strategies:

**Increase the Number of Profitable Relationships with Dealers Using Our Marketing Services.** Since our inception, we have invested heavily to build our Dealer network. We consider our Dealer network to be strategically important because it is the source of the majority of our current revenues and is where new products and services can be introduced. We believe that strengthening the size and quality of our Dealer network is important to the success and growth of our business. We plan to do this by:

- increasing the quality and volume of Leads for new and used vehicles,
- providing value added marketing services that help Dealers more effectively utilize the internet to sell vehicles,
- increasing Dealer satisfaction by improving all aspects of utilizing our services, and
- building strong relationships with large Dealer groups, by providing customized services to meet their needs.

**Increase Sales to Automotive Manufacturers.** We believe that strengthening the size and quality of our relationships with Manufacturers is important to the success and growth of our business. Our strategy is to provide Manufacturers with access to a large number of in-market consumers through our Lead and advertising programs. We have existing relationships with most Manufacturers that market their cars in the U.S. and have opportunities to expand these relationships into our other marketing services.

**Increase the Volume of High Quality Leads.** We believe that increasing the volume of high quality Leads available for our Dealer and Manufacturer customers is crucial to the long-term growth and success of our business. High quality Leads are those Leads that result in high transaction (i.e. buying) closing ratios. As part of our strategy, we continue to develop strong relationships with Network Website companies that can provide high quality Leads.

**Provide an Advertising Component to our Business Model.** Our advertising sales effort is primarily targeted at automobile manufacturers and automotive-related vendors. Using the targeted nature of internet advertising, Manufacturers can advertise their brands effectively to specific subsets of our consumers. Manufacturers can target advertisements to consumers who are researching vehicles, thereby increasing the likelihood of influencing their purchase decisions.

**Enter into Acquisitions and Strategic Alliances.** We plan to grow and advance our business and may do so, in part, through acquisitions and strategic alliances. We continue to review strategic alternatives that may provide opportunities for growth. We believe that acquisitions and strategic alliances may allow us to increase market share, benefit from advancements in technology, and strengthen our business operations by enhancing our offering of products and services. We may acquire assets or businesses that increase our market share in our Lead referral and other automotive marketing services businesses. In addition to complementing our core business and extending our product solutions, we may also acquire assets or businesses primarily focused on automotive-related websites, content and/or technologies.

**Provide a Higher Quality Consumer Experience On Our Websites.** We plan to grow the number of visitors to our websites in order to generate advertising and Lead revenue at a higher gross profit margin. To enhance our appeal to consumers, we plan to continue to develop our websites by enhancing vehicle information usability and personalization. We also plan to continue to make available on our websites high quality automotive-related content and tools from third-party sources so that well informed ready to buy consumers can be connected to Dealers.
Programs, Products and Services

**New Vehicle Lead Program.** Our new vehicle Lead program enables consumers to submit a request for pricing and availability information on a specific make and model of vehicle from a local Dealer through Network Websites. For the Dealer, these requests are Leads, which they receive digitally as part of their participation in our new vehicle Lead program. In addition to specific information regarding the make and model of a vehicle, requests may also include additional data regarding the consumers’ needs, including the vehicle they wish to trade-in, whether they wish to lease or buy, and other options that are important to their buying decision. Additionally, a Lead will include the consumers’ name, phone number, and e-mail address and may include their home address. We validate the consumer contact information using our proprietary Quality Verification System. We then route the requests to one or more local participating Dealers, if available, that sell the type of vehicle requested in the consumers’ area. We then promptly return an e-mail message to the consumer with the Dealer’s name and phone number and the name of the dedicated manager, if any, at the Dealership. Dealers contact the consumer, generally within 24 hours of receiving the Lead with a price quote and availability information for the requested vehicle.

To assist the Dealer in converting Leads into sales, we provide several other ancillary value added services. One service, “Rapid Response,” notifies a Dealer representative on the representative’s mobile phone immediately when a consumer request has been received and allows the Dealer to respond to the consumer more quickly. Another service, “E-mail Manager,” assists the Dealer to keep in contact with consumers who have submitted Leads, but are not ready to purchase a vehicle, by sending customized e-mails to the consumer on behalf of the Dealer at various intervals. These services are provided to Dealers at no additional cost.

Dealers participate in our retail new vehicle Lead program by entering into contracts directly with us or through major dealer groups. Generally, our Dealer contracts may be terminated by either party on 30 days’ notice and are non-exclusive. The majority of our retail Leads revenues consist of either a monthly subscription or per Lead fee paid by Dealers in our network. We reserve the right to adjust our fees to retail Dealers upon 30 days notice at any time during the term of the contract. Manufacturers or their automotive buying service agencies participate in our wholesale new vehicle Lead programs generally by entering into annual agreements with the right to terminate with a 90 day notice.

Revenue from retail new car Leads accounted for 42%, 41%, and 43% of total revenue in 2008, 2007, and 2006, respectively. Revenue from wholesale Leads accounted for 25%, 16%, and 14% of total revenue in 2008, 2007, and 2006, respectively.

**Used Car Lead Program.** Our used car Lead program allows consumers to search on Network Websites for used vehicles according to specific search parameters, such as the price, make, model, mileage, year and location of the vehicle. The consumer can locate and display the description, price, and, if available, actual digital photograph of vehicles that satisfy the search parameters. The consumer can also perform a similar search on our websites. The consumer can then submit a request for additional information regarding a specific vehicle that we then deliver to the local Dealer. In addition to sending requests digitally, consumers may choose to contact the Dealer using a toll free number posted next to the vehicle. We charge each Dealer that participates in the used car program a monthly subscription or a fee per Lead. The used car program provides participating Dealers on-line consumer requests, shortly after their submission, as well as the ability to listen to recorded phone calls made to the toll free number. Revenues from used car Leads accounted for 8%, 9%, and 9% of total revenues in 2008, 2007 and 2006, respectively.

**Finance Lead Programs.** In addition to our new and used Leads programs, we also enable consumers to submit a credit questionnaire or a request for financing on Network Websites from which we acquire Leads. Consumers can also submit a request for financing on our websites. Finance Lead requests are forwarded to the nearest participating Dealer that offers financing or, if a Dealer is not available, to an automotive finance institution. The finance Leads program is designed to enable consumers, who may not be able to secure loans through conventional lending sources, to obtain financing to purchase their desired vehicle. We charge each Dealer and finance institution that participates in the finance Lead program a monthly subscription or per Lead fee. Revenues from finance Leads accounted for 14%, 14%, and 13% of total revenues in 2008, 2007 and 2006, respectively.
Advertising Services. We have multiple website properties on which we offer media products to Manufacturers and related businesses. The websites attract an audience of car-shopping and car-buying consumers that advertisers can target during the vehicle shopping process. A primary way advertisers use our websites to reach these consumers is through vehicle content targeting. This allows automotive marketers to reach users while they are researching one of several site segments, including specific vehicles during the shopping process on our network. Many advertisers use this capability to match their own brand advertising against the same vehicle pages that users are browsing during the research process. This form of placement is referred to as retention marketing in the on-line automotive advertising industry. It enables the advertiser to communicate highly relevant messaging to users while they are researching the vehicle of interest to them. If available, some advertisers will seek to buy inventory of competing automotive brand pages in order to achieve their objectives in capturing new market share. This form of placement is referred to as conquest marketing in the on-line automotive advertising industry. In supporting more brand driven objectives, we sell advertising that consists of fixed ad placement and anchor tenant opportunities. We have a direct marketing platform that helps manufacturers target in-market consumers during the often-extended car shopping process. Designed to keep the brand in consideration, Autobytel Direct allows automotive marketers to deliver specific communications through either e-mail or postal formats to in-market consumers during their purchase cycle. If the advertiser’s goal is to reach out to new potential customers or retain existing interested consumers, Autobytel Direct provides an effective way to access ready to buy consumers who are still in the decision making process. Advertising revenues accounted for 11%, 20%, and 21% of total revenues in 2008, 2007, and 2006, respectively.

Seasonality

Traditionally, our Lead volume fluctuates with automotive industry sales volume that has some measure of seasonality. Typically volume is highest in spring and summer months, with lower volume in the fall and winter months.

Intellectual Property

Our intellectual property include patents and patent applications related to our innovations, products and services; trademarks related to our brands, products and services; copyrights in software and creative content; trade secrets; and other intellectual property rights and licenses of various kinds. We seek to protect our intellectual property assets through patent, copyright, trade secret, trademark and other laws and through contractual provisions. We enter into confidentiality and invention assignment agreements with our employees and contractors, and non-disclosure agreements with third parties with whom we conduct business in order to secure our proprietary rights and additionally limit access to, and disclosure of, our proprietary information.

We have registered service marks with the United States Patent and Trademark Office, including Auto-By-Tel, Autobytel.com, MyRide, Autoweb, CarSmart and the Autobytel.com and MyRide.com logos. We have been issued a patent directed toward an innovative method and system for forming and submitting a Lead over the internet and other computer networks from consumers to suppliers of goods and services. This method permits suppliers of goods or services to provide enhanced customer service by making the purchasing process convenient for consumers as well as suppliers. This patent is also directed toward the communication system used to bring consumers and suppliers closer together. The patent expires on January 14, 2019. We have also been issued patents related to on-line aftermarket accessory shopping and on-line auctions. We cannot assure that these patents will be enforceable by us in litigation. We have applied for additional service marks and patents. We can not assure that any additional service marks will be registered or additional patents issued, or if registered or issued, that they will be enforceable by us in
litigation. Additional information regarding certain risks related to our intellectual property is included in Part I, Item 1A “Risk Factors” of this Annual Report on Form 10-K.

Competition

Competition continued to intensify in 2008 as our key competitors pursued the best quality Leads through strategic relationships, pricing, search marketing programs, and other tactics. The market for the products we offer is characterized by minimal barriers to entry, where new competitors may be able to launch competitive services at relatively low costs.

In the auto-related Leads and marketing services (advertising) marketplace, we compete for Dealer and Manufacturer customers. These customers may also buy Leads and advertising from multiple Leads or advertising suppliers; therefore, we compete to acquire customers, and also compete to provide the quantity, quality and pricing of Leads and advertising supplied to those customers. We believe that we differentiate ourselves from our competitors based on quality, price, and customer service. Furthermore, in the auto-related advertising marketplace, we believe that we differentiate ourselves by “delivering” an audience of consumers who are “in-market” to purchase an automobile, that we can specifically target and measure, through advertising campaign click-through rates and other analytics.

In the auto-related Leads marketplace we compete for Leads with several companies that maintain similar consumer and or business-to-business websites that generate consumer Leads. We may also compete with individual automobile Dealers as they may already maintain or may introduce websites that compete with our websites. Additionally, all major Manufacturers that market their cars in the U.S. have their own websites and many of these Manufacturers have launched on-line buying services to market their products directly to consumers. We also compete indirectly against automotive brokerage firms and affinity programs.

In the advertising marketplace, we compete with major internet portals, transaction based websites, automotive vertical companies and numerous lifestyle sites. We also compete with traditional marketing channels, such as print, radio and television.

Operations and Technology

We believe that our future success is significantly dependent upon our ability to continue to deliver high-performance, reliable and comprehensive websites, enhance consumer and dealer communications, maintain the highest levels of information privacy and ensure transactional security. We currently host all our websites at a secure data center located at a third-party hosting facility. This data center includes redundant power infrastructure, redundant network connectivity, fire detection and suppression systems and security systems to prevent unauthorized access. Our network and computer systems are built on industry standard technology.

System enhancements are primarily intended to accommodate increased traffic across our websites, improve the speed in which Leads are processed and introduce new and enhanced products and services. System enhancements entail the implementation of sophisticated new technology and system processes. We plan to continue to make investments in technology as we believe appropriate.

Government Regulation

We are subject to laws and regulations generally applicable to providers of advertising and commerce over the internet, including federal and state laws and regulations governing data security; privacy; unfair and deceptive acts and practices; advertising; contests, sweepstakes and promotions; and content regulation. For additional, important information related to government regulation of our business, please review the information set forth in Part I, Item 1A “Risk Factors” of this Annual Report on Form 10K.

Employees

As of February 28, 2009, we had 115 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.
In addition to the factors discussed in the “Liquidity and Capital Resources” section of Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Annual Report on Form 10-K, the following additional factors may affect our future results. The risks described below are not the only risks facing us. 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.

Except for fiscal years 2003 and 2004, we have had a history of net annual losses. We may not be profitable in the future. If we are unable to achieve profitability in the future and we continue to lose money, our operations will not be financially viable.

Except for fiscal years 2003 and 2004, we have experienced net annual losses and as of December 31, 2008 we had an accumulated deficit of $271 million. We may not be able to achieve profitability in the future.

Our potential for future profitability must be considered in light of the risks, uncertainties, expenses and difficulties frequently encountered by companies in rapidly evolving markets, such as the market for internet commerce. We believe that to achieve and sustain profitability, we must, among other things:

- continue to send new and used automotive Leads to Dealers that result in sufficient Dealer transactions to justify our fees;
- expand the number of Dealers in our networks;
- sustain and expand our relationships with Manufacturers;
- assure continued access to a high volume of high quality Leads at acceptable prices from third party sources;
- maintain a high degree of customer satisfaction;
- provide secure and easy to use websites for consumers;
- increase visibility of our brand names;
- defend and enforce our intellectual property rights;
- design and implement effective internal control systems;
- continue to attract, train, retain and motivate qualified personnel; and
- continue to upgrade and enhance our technologies to accommodate expanded service offerings and increased consumer traffic.

We cannot be certain that we will be successful in achieving these goals or that if we are successful in achieving these goals, that we will be profitable in the future.

If we are not successful in shifting our strategic emphasis from a media centric advertising business model to our core revenue lines of Lead referral, we may not achieve profitability in the future.

In the fourth quarter of 2008, we made the strategic decision to shift our emphasis to our core revenue lines of Lead referral and away from the transition to a more media centric advertising business model which was initiated in 2006. Pursuant to this shift in strategy, we undertook significant staff reductions and replaced our Chief Executive Officer. The shift in emphasis was due in large part to the challenging external environment in the automotive industry. Due to our evaluation of the external environment, as well as other factors, we determined that continuing to pursue the transition to a media centric model was unlikely to be successful at this time. Our strategy is now dependent on our ability to increase Lead referral revenue. If we are not successful in increasing Lead referral revenue, then we may not be able to achieve profitability in the future.

If our Dealer attrition increases, our Dealer network and revenues derived from this network will decrease.

We derive a majority of our revenue from fees paid by Dealers participating in our Dealer network. A few agreements with Dealers account for a material amount of our revenue. From time to time, a Dealer...
Tables of Contents

or Manufacturer may significantly decrease the number of Dealers participating in our Dealer network or the number of Leads accepted from us. In 2008 and continuing into 2009, we experienced attrition in the number of our Dealers and a decrease in the number of Leads accepted by our Dealers. Our revenues have decreased as a result of this Dealer attrition, and if Dealer attrition increases or continues at the current rate and we are unable to add new Dealers to mitigate the attrition, our revenues will continue to decrease. A material factor affecting Dealer attrition is our ability to provide Dealers with high quality Leads at acceptable prices. High quality Leads are those that result in high closing ratios. Closing ratio is the ratio of the number of vehicles purchased at a Dealer generated from Leads to the total number of Leads sent to that Dealer. In addition, if Manufacturers or Dealers require us to decrease the fees we charge for our services, our revenues will decline, which could have a material adverse effect on our business, results of operations and financial condition. Generally, our Dealer agreements are cancelable by either party upon 30 days notice. Participating Dealers may terminate their relationship with us for any reason, including an unwillingness to accept our subscription terms or as a result of joining alternative marketing programs. We cannot assure that Dealers will not terminate their agreements with us. Our business is dependent upon our ability to attract and retain qualified Dealers and Manufacturers. In order for us to grow or maintain our Dealer networks, we need to reduce our Dealer attrition. We cannot assure that we will be able to reduce the level of Dealer attrition, and our failure to do so could materially and adversely affect our business, results of operations and financial condition.

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

The economic strength of the automotive industry significantly impacts the revenues we derive from Dealers, Manufacturers and other customers.

In 2008, the automotive industry entered what is generally considered to be the most challenging environment of the past few decades. North American vehicle sales decreased significantly versus 2007. Dealer consolidations, closings and bankruptcies increased significantly in 2008. Two major U.S. automobile manufacturers, General Motors and Chrysler, were provided with “bailout” funding by the U.S. federal government in December 2008 and January 2009 to meet their liquidity requirements. One or more of the major U.S. based manufacturers could face possible bankruptcy in 2009. The financial pressure in the automotive industry is not contained to the U.S. automobile manufacturers. Toyota Motor Corporation recently announced that it was forecasting its first fiscal year operating loss in 70 years. Certain foreign governments have also discussed plans to assist their auto manufacturers. Auto sales in the United States are expected to continue to remain at low levels throughout 2009.

One of the factors generally believed to be a contributing factor to the sharp decline in automotive sales has been the lack of available consumer credit to finance vehicle purchases. If credit availability does not improve, the recovery in sales may be further postponed. If automobile sales and the industry in general do not recover, then our business, results of operations and financial condition will be materially and adversely affected.

Competition could affect our market share, pricing, cost structure and Lead supply.

Our success in our Leads businesses is dependent on our ability to originate or acquire and sell high quality Leads in sufficient volumes to our customers at profitable margins. These Leads may be submitted by consumers through our own web properties or purchased from Network Websites. We actively compete for Dealer and Manufacturer customers with companies that maintain automotive Lead referral businesses that are very similar to ours. Several of these competitors may be larger than us and may have greater financial resources than we have. In addition to competition for customers, we also compete with several of these companies in the acquisition of Leads from third party Lead suppliers. If we lose customers or quality Lead supply volume to our competitors, or if our pricing or cost to acquire Leads is impacted, our business, results of operations and financial condition will be materially and adversely impacted.

Our success in our advertising business is dependent on our ability to attract and acquire consumers to our web properties and monetize that traffic at profitable margins with advertisers. Our consumer facing websites compete with offerings from the major portals, transaction based sites,
automotive verticals (websites with content that is primarily automotive in nature) and numerous lifestyle websites. Our advertising business is characterized by minimal barriers to entry, and new competitors may be able to launch competitive services at relatively low costs. If our websites do not provide a compelling, differentiated user experience, we may lose visitors to competing sites. Further, if our website traffic continues to decline, we may lose relevance to our major advertisers who may reduce or eliminate their advertising buys.

We cannot assure that we will be able to compete successfully against current or future competitors, many of which have substantially more technical and financial resources as well as existing brand recognition. In addition, competitive pressures may result in increased marketing costs, decreased website traffic or loss of market share or otherwise may materially and adversely affect our business, results of operations and financial condition.

Our quarterly financial results are subject to significant fluctuations that may make it difficult for investors to predict our future performance.

Our quarterly operating results have fluctuated in the past and may fluctuate in the future due to unforeseen events affecting the economy and industries in which we operate. Other factors that may adversely affect our quarterly operating results include our Lead volume, which fluctuates with automotive industry sales volume that has some measure of seasonality. Typically, volume is highest in the spring and summer months, with lower volume in the fall and winter months. As seasonality occurs, investors may not be able to predict our annual operating results based on a quarter-to-quarter comparison of our operating results. Seasonality in the automotive industry, internet and commercial on-line service usage and advertising expenditures is likely to cause fluctuations in our operating results and could have a material adverse effect on our business, results of operations and financial condition.

Risks Associated with Governmental Regulation

We have identified below in this section entitled “Risks Associated with Government Regulation” factors relating to government regulation certain areas of existing government regulation, which if changed or interpreted to apply to our business, we believe could be costly to us. These laws and regulations include motor vehicle brokerage licensing laws, motor vehicle dealer licensing laws, franchise laws, insurance licensing laws, financial services laws, data security and privacy laws, and tax laws.

Uncertainty exists in the application of various laws and regulations to our business. New laws or regulations applicable to our business, or expansion or interpretation of existing laws and regulations to apply to our business, could subject us to licensing, claims, judgments and remedies, including monetary liabilities and limitations on our business practices, and could increase administrative costs or adversely affect our business. Although we do not believe that existing laws or regulations materially and adversely impact us, our business could be significantly affected by different interpretations or applications of existing laws or regulations, future laws or regulations, or actions or rulings by judicial or regulatory authorities. We operate in a regulatory climate in which there is uncertainty as to the application of various laws and regulations to our business. Our operations may be subjected to adoption, expansion or interpretation of various laws and regulations, and compliance with these laws and regulations may require us to obtain appropriate licenses at an undeterminable and possibly significant initial and annual expense. These additional expenditures may increase future overhead, thereby potentially reducing our future results of operations. There can be no assurance that future laws or regulations or interpretations or expansions of existing laws or regulations will not impose requirements on internet commerce that could substantially impair the growth of e-commerce and harm our business, results of operations and financial condition. The adoption of additional laws or regulations may decrease the popularity or impede the expansion of e-commerce and internet marketing, restrict our present business practices, require us to implement costly compliance procedures or expose us and/or our customers to potential liability, which, in turn, could adversely affect our business.

We may be considered to “operate” or “do business” in states where our customers conduct their business, resulting in regulatory action. In the event any state’s regulatory requirements impose state specific requirements on us or include us within an industry-specific regulatory scheme, we may be required to modify our marketing programs in that state in a manner that may undermine the program’s attractiveness to consumers or Dealers. In the alternative, if we determine that the licensing and related requirements are overly burdensome, we may elect to terminate operations in such state. In each case, our business, results of operations and financial condition could be materially and adversely affected.
If automotive dealer and/or broker laws apply to us we may be required to modify or eliminate our marketing programs. If we are unable to market our services in the manner we currently do, our revenues may decrease and our business may suffer. All states comprehensively regulate vehicles sales and lease transactions, including strict licensure requirements for Dealers and, in some states, brokers. Most of these laws and regulations, we believe, specifically address only traditional vehicle purchase and lease transactions, not internet-based transactions. We do not believe that our marketing services qualify as automobile brokerage activity and, therefore, we do not believe that state motor vehicle dealer or broker licensing requirements apply to us. However, if any state’s regulatory requirements relating to motor vehicle dealers or brokers are deemed applicable to us and we do not comply with those regulatory requirements, we may become subject to fines, penalties or other requirements and may be required to modify our marketing programs or pricing models in those states in a manner that undermines the attractiveness of the program to consumers or Dealers. If we determine that the licensing or other regulatory requirements in a given state are overly burdensome, we may elect to terminate operations in that state. In each case, our revenues may decline and our business, results of operations and financial condition could be materially and adversely affected. In some states we have modified our marketing programs or pricing models to reduce uncertainty regarding our compliance with local laws. As we introduce new services, we may need to incur additional costs associated with additional licensing regulations and regulatory requirements.

If franchise laws apply to us we may be required to modify or eliminate our marketing programs. If we are unable to market our services in the manner we currently do, our revenues may decrease and our business may suffer. We believe that neither our relationship with our Dealers nor our Dealer subscription agreements constitute “franchises” under federal or state franchise laws. However, if any state’s regulatory requirements relating to franchises or our method of business impose additional requirements on us or include us within an industry-specific regulatory scheme, we may be required to modify our marketing programs in that state in a manner that undermines the program’s attractiveness to consumers or Dealers. If our relationship or written agreement with our Dealers were found to be a “franchise” under federal or state franchise laws, we could be subject to additional requirements, such as franchise disclosure and registration requirements, and limitations on our ability to effect changes in our relationships with our Dealers, which may negatively impact our ability to compete and cause our revenues to decrease and our business to suffer. If we become subject to fines or other penalties or if we determine that the franchise and related requirements are overly burdensome, we may elect to terminate operations in that state. If this happens, our revenues may decline and our business, results of operations and financial condition could be materially and adversely affected.

If financial broker licensing requirements apply to us in states where we are not currently licensed, we will be required to obtain additional licenses and our business may suffer. We provide a connection through our websites that allows consumers to obtain finance information and submit Leads for vehicle financing to third party lenders. We also acquire Leads from third parties. We receive marketing fees from financial institutions or Dealers in connection with this advertising activity. We do not demand nor do we receive any fees from consumers for this service. In the event states require us to be licensed as a financial broker, we may be unable to comply with a state’s laws or regulations, or we could be required to incur significant fees and expenses to obtain any financial broker required license and comply with regulatory requirements. In the event states require us to be licensed and we are unable to do so, or we are otherwise unable to comply with laws or regulations required by changes in current operations or the introduction of new services, we could be subject to fines or other penalties or be compelled to discontinue operations in those states, and our business, results of operations and financial condition could be materially and adversely affected.
If insurance licensing requirements apply to us in states where we are not currently licensed, we will be required to obtain additional licenses and our business may suffer. We provide links on our websites enabling consumers to receive quotes for insurance and extended warranty coverage from third parties and submit quote. All on-line applications for quotes are completed on the respective insurance carriers’ or other third party websites. We receive marketing fees from participants in connection with this advertising activity. We do not receive any premiums from consumers nor do we charge consumers fees for our services. We do not believe that these activities require us to be licensed under state insurance laws. However, if any state insurance licensing laws were determined to be applicable to us and if we are required to be licensed and we are unable to do so, or we are otherwise unable to comply with laws or regulations, we could be subject to fines or other penalties or be compelled to discontinue operations in those states, and our business, results of operations and financial condition could be materially and adversely affected.

Changes in the taxation of internet commerce may result in increased costs. Because our business is dependent on the internet, the adoption of new local, state or federal laws or regulations may decrease the growth of internet usage or marketing or the acceptance of internet commerce which could, in turn, decrease the demand for our services and increase our costs or otherwise have a material adverse effect on our business, results of operations and financial condition. Tax authorities in a number of states are currently reviewing the appropriate tax treatment of companies engaged in internet commerce. New state tax laws or regulations or new interpretations of existing laws or regulations may subject us to additional state sales, use and income taxes.

Data Security and Privacy and Technology Risks

Our business is subject to various laws and regulations relating to data security and privacy. New data security and privacy laws and regulations may be adopted regarding the internet or other on-line services that could limit our business flexibility or cause us to incur higher compliance costs.

Compliance with anti-spam laws and regulations may impose significant costs and burdens on our e-mail marketing activities, and violations of these laws and regulations could subject us to fines or other enforcement actions. Among other laws and regulations, federal and state legislation regulating e-mail communications and internet advertising, such as proposed or adopted privacy-related laws that restrict or prohibit unsolicited e-mail (commonly known as “spam”) may adversely affect our ability to market our services to consumers in a cost-effective manner. Violation of these laws may result in monetary fines or penalties or damage to our reputation. The CAN-SPAM Act of 2003, or CAN-SPAM, became effective in the United States on January 1, 2004. CAN-SPAM imposes complex and often burdensome requirements in connection with sending commercial e-mail. In addition, the language of CAN-SPAM contains ambiguities, not all rules implementing CAN-SPAM have yet been promulgated, and courts have not yet interpreted key provisions of CAN-SPAM. Depending on how the law is interpreted and applied, CAN-SPAM may impose significant costs and burdens on our e-mail marketing practices.

Failure to comply with data privacy laws and regulations may significantly impact our internet Leads referral business. Various laws and regulations govern the collection, use, retention, sharing and security of data that we receive from our users, advertisers, and affiliates. In addition, we have and post on our website our own privacy policies and practices concerning the collection, use and disclosure of user data and personal information. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any data-related consent orders, Federal Trade Commission requirements or orders or other federal or state privacy or consumer protection-related laws, regulations or industry self-regulatory principles could result in proceedings or actions against us by governmental entities or others, which could potentially have an adverse effect on our business. Further, failure or perceived failure by us to comply with our policies, applicable requirements, or industry self-regulatory principles related to the collection, use, sharing or security of personal information or other privacy-related matters could result in a loss of user confidence in us, damage to our brands, and ultimately in a loss of users, advertisers, or Lead referral and advertising affiliates which could adversely affect our business. Proposed legislation or regulations
concern data privacy and retention issues related to our business, and it is not possible to predict whether or when this or other legislation or regulations will be adopted. Certain proposals, if adopted, could impose requirements that may result in a decrease in our user registrations and revenues. In addition, the interpretation and application of user data protection laws are currently unsettled.

**Increased security risks of on-line Leads collection and referral, advertising and e-commerce may cause us to incur significant expenses and may negatively impact our credibility and business.** A significant issue for on-line businesses like ours is the secure transmission of confidential and personal information over public networks. Concerns over the security of transactions conducted on the internet, consumer identity theft and user privacy have been significant barriers to growth in consumer use of the internet, on-line advertising, and e-commerce. Despite our implementation of security measures, however, our computer systems may be susceptible to electronic or physical computer break-ins, viruses and other disruptive harms and security breaches. Advances in computer capabilities, new discoveries in the field of cryptography or other developments may specifically compromise our security measures. Any perceived or actual unauthorized disclosure of personally identifiable information regarding website visitors, whether through breach of our network by an unauthorized party, employee theft or misuse, or otherwise, could harm our reputation and brands, substantially impair our ability to attract and retain our audiences, or subject us to claims or litigation arising from damages suffered by consumers, and thereby ham our business and operating results. If consumers experience identity theft after using any of our websites, we may be exposed to liability, adverse publicity and damage to our reputation. To the extent that identity theft gives rise to reluctance to use our websites or a decline in consumer confidence in financial transactions over the internet, our business could be adversely affected. Alleged or actual breaches of the network of one of our business partners or competitors whom consumers associate with us could also harm our reputation and brands. In addition, we could incur significant costs in complying with the multitude of state, federal and foreign laws regarding the unauthorized disclosure of personal information. For example, California law requires companies that maintain data on California residents to inform individuals of any security breaches that result in their personal information being stolen. Because our success depends on the acceptance of on-line services and e-commerce, if we are unable to protect against the threat of security breaches or to alleviate problems caused by such breaches. Internet fraud has been increasing over the past few years, and fraudulent on-line transactions, should they continue to increase in prevalence, could also adversely affect the customer experience and therefore our business, operating results and financial condition.

**If we fail to detect click-through fraud, we could lose the confidence of our advertisers, thereby causing our business to suffer.**

We are exposed to the risk of fraudulent clicks on our advertisements by persons seeking to increase the advertising fees paid to us. Click-through fraud occurs when a person clicks on an advertisement displayed on our website in order to generate revenue to us and to increase the cost for the advertiser. If we are unable to monitor and prevent this type of fraudulent activity, we may have to issue retroactive refunds of amounts previously paid to us if any such fraud is later detected. Such fraud could lead advertisers to become dissatisfied with our advertising programs, which, in turn, could lead to a loss of advertisers and revenue.

**Our success is dependent on keeping pace with advances in technology. If we are unable to keep pace with advances in technology, consumers may stop using our services and our revenues will decrease. If we are required to invest substantial amounts in technology, our results of operations will suffer.**

The internet and electronic commerce markets are characterized by rapid technological change, changes in user and customer requirements, frequent new service and product introductions embodying new technologies and the emergence of new industry standards and practices that could render our existing websites and technology obsolete. These market characteristics are intensified by the emerging nature of the market and the fact that many companies are expected to introduce new internet products and services in the near future. If we are unable to adapt to changing technologies, our business, results of operations and financial condition could be materially and adversely affected. Our performance will depend, in part,
on our ability to continue to enhance our existing services, develop new technology that addresses the increasingly sophisticated and varied needs of our prospective customers, license leading technologies and respond to technological advances and emerging industry standards and practices on a timely and cost-effective basis. The development of our websites and other proprietary technology entails significant technical and business risks. We may not be successful in using new technologies effectively or adapting our websites, or other proprietary technology to customer requirements or to emerging industry standards. In addition, if we are required to invest substantial amounts in technology in order to keep pace with technological advances, our results of operations will suffer.

Securities Market Risks

The public market for our common stock may be volatile, especially since market prices for internet-related and technology stocks have often been unrelated to operating performance. Our common stock is currently listed on the NASDAQ Global Market, but we cannot assure that an active trading market will be sustained or that the market price of the common stock will not decline. The stock market in general has experienced significant price fluctuations. The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to factors such as:

- actual or anticipated variations in our quarterly operating results;
- historical and anticipated operating metrics such as the number of participating dealers, the visitors to our websites and the frequency with which they transact;
- announcements of new product or service offerings;
- technological innovations;
- competitive developments, including actions by automotive manufacturers;
- changes in financial estimates by securities analysts or our failure to meet such estimates;
- conditions and trends in the internet, electronic commerce and automotive industries;
- our ability to comply with the conditions to continued listing of our stock on the NASDAQ Global Market;
- adoption of new accounting standards affecting the technology or automotive industry, and
- general market or economic conditions and other factors.

Further, the stock markets, and in particular the NASDAQ Global Market, have experienced price and volume fluctuations that have particularly affected the market prices of equity securities of many technology companies and have often been unrelated or disproportionate to the operating performance of such companies. These broad market factors have affected and may adversely affect the market price of our common stock. In addition, general economic, political and market conditions, such as recessions, interest rates, energy prices, international currency fluctuations, terrorist acts, military actions or wars, may adversely affect the market price of the common stock. In the past, following periods of volatility in the market price of a company’s securities, securities class action litigation has often been instituted against companies with publicly traded securities. This litigation could result in substantial costs and a diversion of management’s attention and resources, which would 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 business days. Our common stock has traded below $1.00 per share since October 1, 2008, 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.

The NASDAQ Stock Market LLC has implemented a temporary suspension of its enforcement of the minimum $1.00 closing bid price and minimum market value for publicly held shares continued listing rules. This temporary suspension, originally scheduled to expire on January 19, 2009, was extended and currently will remain in effect through April 19, 2009, unless further extended.

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 such stock, and our ability to raise additional capital will likely be adversely affected. If our common stock is delisted and thereafter traded in the over-the-counter market, the ability to buy and sell our stock could be less orderly and efficient and more costly. If we sought to relist our stock on the NASDAQ Global Market we would be required to comply with all of the initial listing requirements to be relisted on the NASDAQ Global Market, which in some instances are more stringent than the continued listing requirements.

We rely on third-party providers for our primary internet connections and technologies, and environmental controls, and any errors, failures or disruption in the services provided by these third parties could significantly harm our business and operating results.

A significant portion of our technology infrastructure and software is collocated at third parties’ facilities, and maintained or operated by third parties. Any failure of these third parties to prevent failures in their technology, failure to foresee and prepare for growth and expansion of their systems, or failure to properly secure and defend their solutions could adversely affect our operations. In addition significant natural disasters such as earthquakes, could negatively affect our operations. We rely upon third parties for the distribution and acceleration of our website content. Failures of these third parties to continue their operations, foresee trends in technology infrastructure growth or protect their solution from malicious software and attacks could significantly affect the delivery of our website services.

Risks Associated with Intellectual Property

Litigation regarding intellectual property rights is common in the internet and software industries. We expect that internet technologies and software products and services may be increasingly subject to third-party infringement claims as the number of competitors in our industry segment grows and the functionality of products in different industry segments overlaps.

Misappropriation or infringement of our intellectual property and proprietary rights could impair our competitive position. Enforcement actions to protect our intellectual property could materially and adversely affect our business, results of operations and financial condition. Our ability to compete depends upon our proprietary systems and technology. While we rely on trademark, trade secret, patent and copyright law, confidentiality agreements and technical measures to protect our proprietary rights, we believe that the technical and creative skills of our personnel, continued development of our proprietary systems and technology, brand name recognition and reliable website maintenance are more essential in establishing and maintaining a Leadership position and strengthening our brands. As part of our confidentiality procedures, we generally enter into confidentiality agreements with our employees and consultants and limit access to our trade secrets and technology. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our services or to obtain and use information that we regard as proprietary. Policing unauthorized use of our proprietary rights is difficult. We cannot assure that the steps taken by us will prevent misappropriation of technology or that the agreements entered into for that purpose will be enforceable. Effective trademark, service mark, patent, copyright and trade secret protection may not be available where our products and services are made available on-line. In addition, litigation may be necessary to enforce or protect our intellectual property rights or to defend against claims of infringement or invalidity. We recently filed a lawsuit against multiple
defendants to protect one of our patents, and are defendants in two other patent litigation matters, one of which is a declaratory judgment action regarding one of our patents. Litigation, even if successful, could result in substantial costs and diversion of resources and management attention and could materially and adversely affect our business, results of operations and financial condition. Misappropriation of our intellectual property or potential litigation could also have a material adverse effect on our business, results of operations and financial condition. For additional information regarding litigation, see Part II, Item 8, Note 6, “Commitments and Contingencies—Litigation” of this Annual Report on Form 10K.

We face risk of claims from third parties relating to intellectual property. These claims and liabilities could harm our business. There can be no assurance that our services do not infringe on the intellectual property rights of third parties. Claims of infringement, even if unsuccessful, could result in substantial costs and diversion of resources and management attention and could materially and adversely affect our business. If we are not successful, we may be subject to preliminary and permanent injunctive relief and monetary damages which may be trebled in the case willful infringements. We are currently involved in patent litigation claiming that we infringe certain patent rights of third parties. For additional information regarding litigation, see Part II, Item 8, Note 6, “Commitments and Contingencies—Litigation” of this Annual Report on Form 10K.

We could be adversely affected by other litigation. If we were subject to a significant adverse litigation outcome, our financial condition could be materially and adversely affected.

From time to time, we are involved in litigation or legal matters not related to intellectual property rights and arising from the normal course of our business activities. The actions filed against us and other litigation or legal matters, even if not meritorious, could result in substantial costs and diversion of resources and management attention and an adverse outcome in litigation could materially and adversely affect our business, results of operations and financial condition. Our liability insurance may not cover all potential claims to which we are exposed and may not be adequate to indemnify us for all liability that may be imposed. Any imposition of liability that is not covered by insurance or is in excess of our insurance coverage could have a material adverse effect on our business, results of operations and financial condition. See Part II, Item 8, Note 6, “Commitments and Contingencies—Litigation” of this Annual Report on Form 10-K.

We could be adversely affected by actions of third parties that could subject us to litigation that could significantly and adversely affect our business.

We could face liability for information retrieved or obtained from or transmitted over the internet by third parties and liability for products sold over the internet by third parties. We could be exposed to liability with respect to third-party information that may be accessible through our websites, links or car review services. These claims might, for example, be made for defamation, negligence, patent, copyright or trademark infringement, personal injury, breach of contract, unfair competition, false advertising, invasion of privacy or other legal theories based on the nature, content or copying of these materials. These claims might assert, among other things that, by directly or indirectly providing links to websites operated by third parties we should be liable for copyright or trademark infringement or other wrongful actions by such third parties through those websites. It is also possible that, if any third-party content provided on our websites contains errors, consumers could make claims against us for losses incurred in reliance on such information. Any claims could result in costly litigation, divert management’s attention and resources, cause delays in releasing new or upgrading existing services or require us to enter into royalty or licensing agreements.

We also enter into agreements with other companies under which any revenue that results from the purchase or use of services through direct links to or from our websites or on our websites is shared. In addition, we acquire personal information and data in the form of Leads purchased from third party
We are uncertain of our ability to obtain additional financing for our future capital needs. If we are unable to obtain additional financing we may not be able to continue to operate our business.

Under our current operating plan for 2009, we currently anticipate that our cash and cash equivalents and short-term investments will be sufficient to meet our anticipated needs for working capital and other cash requirements at least for the next 12 months. We may need to raise additional funds sooner, however, in order to develop new or enhance existing services or products or to respond to competitive pressures, or to acquire assets or businesses. There can be no assurance that additional financing will be available on terms favorable to us, or at all. Recent macro-economic conditions include reported reductions in available credit. If adequate funds are not available or are not available on acceptable terms, our ability to develop or enhance services or products or respond to competitive pressures or acquire assets or businesses would be significantly limited. In addition, our ability to continue to operate our business may also be materially and adversely affected in the event additional financing is not available when required.

Our certificate of incorporation and bylaws, stockholder rights 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 stockholder rights 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 allow us to issue preferred stock with rights senior to those of the common stock without any further vote or action by the stockholders. These provisions provide 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 fewer than a majority of the board of directors are up for election at each annual meeting. In addition, these provisions 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 the stockholder rights plan, if a person or group acquires 15% 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. In addition, under certain circumstances, all right holders, other than the acquirer, will be entitled to receive at the then exercise price of a right that number of shares of common stock of the acquiring company which, at the time, has a market value of two times the exercise price of the right. The initial exercise price of a right is $65. These charter and rights 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.

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.
Our decision to evaluate strategic alternatives may have a negative impact on employee retention, as well as customer and supplier relationships.

In August 2008 we engaged RBC Capital Markets Corporation (RBC), an investment banking firm, to act as a financial advisor and to assist us in exploring and evaluating strategic alternatives to maximize shareholder value. The public disclosure of this action may create concern among our employees, increasing turnover and disrupting key business activities. We have implemented a key employee retention program to address retention risks, but there can be no assurance that this retention program will be successful in retaining employees. Additionally, our decision to evaluate strategic alternatives may create concerns among our customers and suppliers regarding our stability, impacting our ability to acquire and retain customers and maintain supplier relationships. The failure to retain employees or to acquire or retain business relations could have a material and adverse effect on our business, results of operations and financial condition.

If our internal controls and procedures fail, our financial condition, results of operations and cash flow could be materially and adversely affected.

Management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. In making its assessment of the effectiveness of our internal control over financial reporting as of December 31, 2008, management used the criteria described in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). A material weakness is a control deficiency, or combination of control deficiencies, that results in a more than remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

Management determined that we had no material weaknesses in our internal control over financial reporting as of December 31, 2008. Our internal controls may not prevent all potential errors and fraud, because any control system, no matter how well designed, can only provide reasonable and not absolute assurance that the objectives of the control system will be achieved. We have had material weaknesses in our internal control over financial reporting in the past and there is no assurance that we will not have one or more material weaknesses in the future resulting from failure of our internal controls and procedures.

Our ability to report our financial results on a timely and accurate basis could be adversely affected by a failure in our internal control over financial reporting. If our financial statements are not fairly presented, investors may not have an accurate understanding of our operating results and financial condition. If our financial statements are not timely filed with the SEC, we could be delisted from the NASDAQ Global Market. If either or both of these events occur, it could have a material adverse affect on our ability to operate our business and the market price of our common stock. In addition, a failure in our internal control over financial reporting could materially and adversely affect our financial condition, results of operations and cash flow.
Item 1B.  Unresolved Staff Comments

None.

Item 2.  Properties

Our headquarters are located in an office building in Irvine, California. We lease a total of approximately 60,000 square feet through March 31, 2009, at which time our leased space will be reduced to approximately 26,000 square feet. The lease expires in July 31, 2011, with two one-year extension options available. Car.com is located in an office building in Troy, Michigan and occupies approximately 4,700 square feet. This lease expires in January 2011. We believe that our existing facilities are adequate to meet our needs and that existing needs and future growth can be accommodated by leasing alternative or additional space.

Item 3.  Legal Proceedings

See Note 6 of the “Notes to Consolidated Financial Statements” in Part II, Item 8, “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K, which is incorporated by reference herein.

Item 4.  Submission of Matters to a Vote of Security Holders

No matters were submitted to a vote of security holders during the fourth quarter of 2008.
PART II

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

Our common stock, par value $0.001 per share is listed on the NASDAQ Global Market and trades under the symbol “ABTL”. The following table sets forth, for the calendar quarters indicated, the range of high and low sales prices of our common stock.

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<tr>
<td>2008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Quarter</td>
<td>$2.93</td>
<td>$1.95</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>$2.06</td>
<td>$1.25</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>$1.53</td>
<td>$0.93</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>$0.98</td>
<td>$0.38</td>
</tr>
</tbody>
</table>

As of February 28, 2009, there were 524 holders of record of our common stock. We have never declared or paid any cash dividends on our common stock and we do not expect to pay any cash dividends in the foreseeable future.
Performance Graph

The following graph shows a comparison of cumulative total stockholder returns for our common stock, the NASDAQ Composite, the Russell 2000 Index, the Russell 3000 Index, the S&P Automobile Manufacturers Index, and the S&P Smallcap 600 Automotive Retail Index. We will discontinue the use of the Russell 2000 and Russell 3000 indices in our future SEC filings; because we are no longer included in either index and because we believe these indices no longer provide meaningful comparisons to Autobytel and the automotive related industry in which we operate. We continue to show the Russell 2000 and Russell 3000 indices because applicable regulations require that the new and old indices be shown if the graph uses a different index from that used the previous year. We believe that using the S&P Automobile Manufacturers and the S&P Smallcap 600 Automotive Retail Index provides a meaningful comparison of our stock performance to investors, and we plan to use these indices in future filings with the SEC. The comparisons reflected in the graph and table below are not intended to predict the future performance of our stock and may not be indicative of our future performance. The data regarding our common stock assume an investment in our common stock at the closing price of $9.11 per share of our common stock on December 31, 2003.

![Performance Graph Image]

<table>
<thead>
<tr>
<th>Cumulative Total Return</th>
<th>12/03</th>
<th>12/04</th>
<th>12/05</th>
<th>12/06</th>
<th>12/07</th>
<th>12/08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autobytel</td>
<td>$100.00</td>
<td>$95.44</td>
<td>$80.65</td>
<td>$70.00</td>
<td>$58.44</td>
<td>$4.94</td>
</tr>
<tr>
<td>NASDAQ Composite</td>
<td>100.00</td>
<td>118.33</td>
<td>124.18</td>
<td>126.61</td>
<td>138.33</td>
<td>80.65</td>
</tr>
<tr>
<td>S&amp;P Automobile Manufacturers</td>
<td>100.00</td>
<td>86.20</td>
<td>46.12</td>
<td>59.05</td>
<td>51.05</td>
<td>12.17</td>
</tr>
<tr>
<td>S&amp;P Smallcap 600 Automotive Retail</td>
<td>100.00</td>
<td>93.39</td>
<td>89.94</td>
<td>113.14</td>
<td>68.34</td>
<td>24.58</td>
</tr>
<tr>
<td>Russell 2000</td>
<td>100.00</td>
<td>118.33</td>
<td>123.72</td>
<td>146.44</td>
<td>144.15</td>
<td>95.44</td>
</tr>
<tr>
<td>Russell 3000</td>
<td>100.00</td>
<td>111.95</td>
<td>118.80</td>
<td>137.47</td>
<td>144.54</td>
<td>90.61</td>
</tr>
</tbody>
</table>
The tables below set forth our selected consolidated financial data. We prepared this information using the consolidated financial statements of Autobytel for the five years ended December 31, 2008. Certain amounts in the selected consolidated financial data have been reclassified to conform to the 2008 presentation. You should read these selected consolidated financial data together with the Consolidated Financial Statements and related Notes contained in this Annual Report on Form 10-K and in our prior and subsequent reports filed with the SEC, as well as the section of this Annual Report on Form 10-K and our other reports entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

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<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>(Amounts in thousands, except per-share data)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>RESULTS OF OPERATIONS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$ 71,159</td>
<td>$ 84,385</td>
<td>$ 85,102</td>
<td>$ 97,002</td>
<td>$ 99,336</td>
</tr>
<tr>
<td>Income/(loss) from continuing operations</td>
<td>(84,309)</td>
<td>(17,286)</td>
<td>(37,327)</td>
<td>(11,451)</td>
<td>4,851</td>
</tr>
<tr>
<td>Net income/(loss)</td>
<td>(79,916)</td>
<td>(5,355)</td>
<td>(31,468)</td>
<td>(6,258)</td>
<td>5,837</td>
</tr>
<tr>
<td>Basic and diluted earnings/(loss) per share from continuing operations</td>
<td>(1.91)</td>
<td>(0.40)</td>
<td>(0.88)</td>
<td>(0.27)</td>
<td>0.12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>(Amounts in thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>FINANCIAL POSITION (1):</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 27,393</td>
<td>$ 27,601</td>
<td>$ 22,743</td>
<td>$ 33,353</td>
<td>$ 24,287</td>
</tr>
<tr>
<td>Total assets (2)</td>
<td>42,002</td>
<td>104,996</td>
<td>124,694</td>
<td>147,328</td>
<td>160,717</td>
</tr>
<tr>
<td>Working capital (3)</td>
<td>26,972</td>
<td>25,762</td>
<td>25,066</td>
<td>48,426</td>
<td>49,983</td>
</tr>
<tr>
<td>Non-current liabilities</td>
<td>181</td>
<td>436</td>
<td>195</td>
<td>152</td>
<td>8</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(271,358)</td>
<td>(191,442)</td>
<td>(186,087)</td>
<td>(154,619)</td>
<td>(148,361)</td>
</tr>
<tr>
<td>Stockholders’ equity</td>
<td>$ 29,975</td>
<td>$ 106,252</td>
<td>$ 103,818</td>
<td>$ 128,347</td>
<td>$ 136,067</td>
</tr>
</tbody>
</table>

(1) See Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Notes to the Consolidated Financial Statements” in Part II, Item 8 of this Annual Report on Form 10-K for information regarding accounting changes, asset dispositions, discontinued operations and other items affecting comparability.

(2) Excludes assets held for sale of approximately $17.2 million and $2,000 as of December 31, 2007 and 2006, respectively.

(3) Excludes net assets and (liabilities) held for sale of approximately $17.0 million and $(0.4) million as of December 31, 2007 and 2006, respectively.
Overview

For the year ended December 31, 2008 our results of operations were affected and may continue to be affected in the future, by various factors, including, but not limited to, the following:

- General economic conditions and specifically market conditions in the automotive industry;
- The effects of competition (e.g., the availability and pricing of competing services and products and the resulting effects on sales and pricing of our services and products);
- A decline in Leads delivered to our Dealers;
- Variations in spending by Manufacturers and others for our advertising services;
- The amount of visits (traffic) to our websites;
- The cost of acquiring traffic to our websites;
- The rates attainable from our advertisers;
- The implementation of certain cost reduction initiatives; and
- The change from a media-centric strategy to a core Leads business.

In August 2008, we engaged RBC Capital Markets Corporation (“RBC”), an investment banking firm, to act as a financial advisor and to assist us in exploring and evaluating strategic alternatives to maximize shareholder value, including the possible sale of the company or certain of its assets. In January 2009, we announced that we had ended our evaluation of a possible sale of the Company and would continue to evaluate other strategic alternatives with RBC. In arriving at its decision, our Board of Directors concluded that shareholder value would not be maximized by a sale of the Company in the current economic environment.

2008 Industry Developments

In 2008, the automotive industry entered what is generally considered to be the most challenging environment of the past few decades. North American vehicle sales decreased significantly versus 2007. Dealer consolidations, closings and bankruptcies increased significantly in 2008. Two major U.S. automobile manufacturers, General Motors and Chrysler, were provided with “bailout” funding by the U.S. federal government in December 2008 and January 2009 to meet their liquidity requirements. One or more of the major U.S. automobile manufacturers could face possible bankruptcy in 2009. The financial pressure in the automotive industry is not contained to the U.S. automobile manufacturers. Toyota Motor Corporation recently announced that it was forecasting its first fiscal year operating loss in 70 years. Several foreign governments have also discussed plans to assist their auto manufacturers. Auto sales in the United States are expected to continue to remain at low levels throughout 2009.

One of the factors generally believed to be a contributing factor to the sharp decline in vehicle sales has been the lack of available consumer credit to finance car purchases. If credit availability does not improve, the recovery in sales may be further postponed.

Basis of Presentation

We sold certain assets and liabilities of our Automotive Information Center ("AIC") data operations on January 31, 2007; sold our wholly-owned subsidiary, Retention Performance Marketing, Inc., (“RPM”) on June 30, 2007; and sold certain assets and liabilities of its AVV Inc. (“AVV”) business on January 23, 2008, collectively the “Divestitures.” Accordingly, the Divestitures are presented in the consolidated financial statements as discontinued operations. As discontinued operations, revenues and expenses of the
Divestitures are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs of the Divestures that will be eliminated from future operations.

Results of Operations

The following table sets forth our results of operations as a percentage of revenues:

<table>
<thead>
<tr>
<th></th>
<th>Years Ended December 31</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
<td>2007</td>
<td>2006</td>
</tr>
<tr>
<td><strong>TOTAL REVENUES:</strong></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>COSTS AND EXPENSES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>72%</td>
<td>62%</td>
<td>56%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>24%</td>
<td>25%</td>
<td>24%</td>
</tr>
<tr>
<td>Technology support</td>
<td>23%</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>32%</td>
<td>33%</td>
<td>46%</td>
</tr>
<tr>
<td>Patent litigation settlement</td>
<td>(4)%</td>
<td>(14)%</td>
<td>—</td>
</tr>
<tr>
<td>Goodwill impairment</td>
<td>73%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total costs and expenses</strong></td>
<td>220%</td>
<td>127%</td>
<td>147%</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(120)%</td>
<td>(27)%</td>
<td>(47)%</td>
</tr>
<tr>
<td>Interest and other income</td>
<td>2%</td>
<td>7%</td>
<td>3%</td>
</tr>
<tr>
<td>Loss from continuing operations</td>
<td>(118)%</td>
<td>(20)%</td>
<td>(44)%</td>
</tr>
<tr>
<td>Discontinued operations, net</td>
<td>6%</td>
<td>14%</td>
<td>7%</td>
</tr>
<tr>
<td><strong>NET LOSS</strong></td>
<td>(112)%</td>
<td>(6)%</td>
<td>(37)%</td>
</tr>
</tbody>
</table>
Revenues by groups of similar services are as follows:

<table>
<thead>
<tr>
<th>(dollar amounts in thousands)</th>
<th>Years Ended December 31,</th>
<th>2008 vs. 2007</th>
<th>2007 vs. 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
<td>2007</td>
<td>Change $</td>
</tr>
<tr>
<td>Lead fees</td>
<td>$63,169</td>
<td>$67,386</td>
<td>$ (4,217)</td>
</tr>
<tr>
<td>Advertising</td>
<td>7,794</td>
<td>16,885</td>
<td>(9,091)</td>
</tr>
<tr>
<td>Other</td>
<td>196</td>
<td>114</td>
<td>82</td>
</tr>
<tr>
<td><strong>TOTAL REVENUES</strong></td>
<td><strong>$71,159</strong></td>
<td><strong>$84,385</strong></td>
<td><strong>$13,226</strong></td>
</tr>
</tbody>
</table>

**2008 Compared to 2007**

**Lead Fees.** Lead Fees decreased $4.2 million or 6% in 2008 compared to 2007. The total volume of Leads we delivered in 2008 compared to 2007 remained relatively flat; however, the sales mix changed significantly, with a 27% increase in Leads delivered to Manufacturers and other wholesale channels. The Manufacturers’ and other wholesale channels generally have lower average sales prices per Lead compared to Dealer channels. This sales mix change resulted in a $2.4 million Lead fee decline in 2008 versus 2007. The sales mix change was primarily a result of net Dealer cancellations in the second half of 2008.

In addition to the changes in the Leads sales mix, we experienced a 23% decrease in the volume of finance Leads delivered. This volume decline was partially offset by an 11% increase in the average sales price per finance Lead which led to a net decrease of $1.8 million in revenue. The decline in finance Leads was due to the overall tightening of the credit markets in the second half of 2008, with higher credit quality Leads demanded by lenders, which led to an overall decrease in the volume of finance Leads delivered.

**Advertising.** The $9.1 million or 54% decrease in advertising revenues in 2008 compared to the prior year was primarily due to a decrease in page views across our websites and a reduction in overall advertising rates. The decrease in page views across our websites was primarily the result of our initiatives to eliminate low quality traffic and a reduction in search engine marketing. The reduction in advertising rates was due to pricing pressure from major Manufacturer advertisers as well as a change in the overall mix of website traffic from more highly valued in-market car shoppers to more general interest.

**2007 Compared to 2006**

**Lead Fees.** Lead fees decreased by $0.1 million to $67.4 million in 2007 compared to $67.5 million in 2006. Our Lead fees are influenced by numerous factors, including but not limited to, Lead volume, mix between Leads delivered to retail dealers and enterprise dealers, pricing and general market conditions. The decrease was primarily due to a change in the mix of Leads delivered, with an increase of approximately 9% in the proportion of Leads delivered to enterprise dealers that generally have a lower average sales price per Lead. This decline was partially offset by deferred revenue of $1.4 million that was recognized under a multiple-element arrangement upon delivery of all services in 2007 and an increase of approximately 12% in the average sales price per finance request delivered.

**Advertising.** Advertising revenue decreased by $0.6 million or 4%, to $16.9 million in 2007 compared to $17.5 million in 2006. The decrease was primarily due to a reduction in total advertising page views resulting from our initiative to eliminate lower quality traffic sources and a decline in spending by automotive manufacturers in our direct marketing program, partially offset by higher display advertising rates on our website properties.
Costs and expenses were as follows:

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenues</td>
<td>$51,384</td>
<td>$52,448</td>
<td>$47,653</td>
<td>$(1,064)</td>
<td>(2%)</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>17,043</td>
<td>21,474</td>
<td>20,128</td>
<td>(4,431)</td>
<td>(21)</td>
</tr>
<tr>
<td>Technology support</td>
<td>16,003</td>
<td>18,119</td>
<td>17,476</td>
<td>(2,116)</td>
<td>(12)</td>
</tr>
<tr>
<td>General and administrative</td>
<td>22,977</td>
<td>27,529</td>
<td>39,625</td>
<td>(4,552)</td>
<td>(17)</td>
</tr>
<tr>
<td>Patent litigation settlement</td>
<td>(2,667)</td>
<td>(12,000)</td>
<td>—</td>
<td>9,333</td>
<td>(78)</td>
</tr>
<tr>
<td>Goodwill impairment</td>
<td>52,074</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL COSTS AND EXPENSES</strong></td>
<td>$156,814</td>
<td>$107,570</td>
<td>$124,882</td>
<td>$49,244</td>
<td>46%</td>
</tr>
</tbody>
</table>

**2008 Compared to 2007**

**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 providers, including internet portals and on-line 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.

The $1.1 million or 2% decrease in the cost of revenues in 2008 compared to the prior year was primarily due to a decrease of $3.5 million in SEM, a $2.9 million decrease in other traffic acquisition costs and a decrease of $0.6 million of Lead acquisition costs, partially offset by a $4.3 million long-lived asset impairment charge, a $1.3 million increase in depreciation, a $0.4 million increase in website hosting costs.

The average cost per Lead delivered decreased by 2% in 2008 due to an increase in lower cost Leads delivered to Manufacturers and through other wholesale channels, partially offset by a decrease in the amount of internally generated Leads from our owned websites. The decrease in internally generated leads in 2008 was the result of lower SEM and other Lead generating activities. The average cost per delivered Lead was $8.68 in 2008 versus $8.90 in 2007.

SEM and other traffic acquisition costs have decreased due to cost containment initiatives and efforts to more efficiently deploy marketing dollars. Depreciation and website hosting costs have increased due to the launch of the MyRide.com website in third quarter 2007. The impairment charge is related to the write-down of the MyRide website in the fourth quarter of 2008, which was due to the decision to discontinue the use of the MyRide related software platform, as well as, lower than expected website traffic and the related impact on our projected cash flows.

**Sales and Marketing.** Sales and marketing expense for the year ended December 31, 2008 decreased by $4.4 million or 21% compared to the prior year, due principally to personnel reductions and other internal cost containment initiatives, partially offset by severance costs of $1.2 million.

**Technology Support.** Technology support cost includes compensation and related costs for personnel responsible for enhancing the features, content and functionality of our websites, and our internet-based communications platform for Lead referral, costs associated with our telecommunications and computer infrastructure, and costs related to data and technology maintenance. Technology support expense in 2008...
General and Administrative. General and administrative expense for the year ended December 31, 2008 decreased by $4.6 million or 17% compared to the prior year. The decrease was primarily due to:

- a decrease in net personnel and temporary labor expense of $3.0 million (net of the increase related to severance of $2.3 million and the decrease of stock compensation of $1.1 million),
- a decrease in insurance and other expenses of approximately $2.0 million, and
- a decrease in professional fees of $1.8 million, primarily as a result of cost containment initiatives.

Partially offsetting these decreases were increases related to:

- an impairment charge of $1.2 million related to a software project that is no longer being developed or expected to be placed in service,
- an increase in bad debt expense of $1.0 million, which is due to the overall deterioration in the macro-economic environment and the automotive industry in particular in the later part of 2008, and its impact on our estimation of the collectability of our accounts receivable balances at December 31, 2008.

Patent Litigation Settlement. In 2004, we brought a lawsuit for patent infringement against Dealix Corporation (“Dealix”). In December 2006, we entered into a settlement agreement with Dealix (the “Settlement Agreement”). The agreement provides that Dealix will pay us a total of $20.0 million in settlement payments for a mutual release of claims and a license from us to Dealix and its parent company the Cobalt Group, of certain of our patent and patent applications. On March 13, 2007, we 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 annual anniversary dates of the initial payment. On March 14, 2008, we received the first of three $2.7 million settlement payments pursuant to the agreement. We recorded the payments as patent litigation settlement; in the period payment was received, as a reduction to costs and operating expenses. The remaining payments are guaranteed by WP Equity Partners, Inc., a Warburg Pincus affiliate and are expected to be received in March of 2009 and 2010. We have been unable to assess with reasonable assurance the collectability of the remaining payments under the Settlement Agreement as we do not have financial information to support the credit worthiness of the debtor or guarantor. We do not have reasonable assurance that we will receive any remaining payments on their respective due dates or at all, and therefore have not recorded any amounts receivable related to the Settlement Agreement as of December 31, 2008 or 2007.

Goodwill Impairment. As discussed below, we evaluate the carrying value of enterprise goodwill for impairment in accordance with SFAS 142, “Goodwill and Other Intangible Assets.” During 2008 we performed our annual impairment test by first comparing the carrying value of Autobytel to its fair value based on market capitalization at that date. As the carrying value exceeded the fair value, the second step impairment measurement was performed based on a discounted projection of future cash flows and market methods of determining fair value. As a result of this testing, a non-cash impairment charge of $52.1 million was recorded during 2008.

Interest and Other Income. Interest and other income decreased by $4.6 million or 77% to $1.3 million in 2008 compared to $5.9 million in 2007. The decrease was primarily due to the $4.0 million one-time gain recognized in 2007 related to the sale of our investment in Autobytel Japan in 2007, with no significant gains recorded in 2008, and the decrease of interest income by $0.8 million. The decrease in interest income in 2008 is primarily due to lower average invested balances combined with a lower interest rate environment in 2008.
Cost of Revenues. Cost of revenues increased by $4.8 million or 10% to $52.5 million in 2007 compared to $47.7 million in 2006. This represents 62% and 56% of total revenues from continuing operations for 2007 and 2006, respectively. The increase was primarily due to a $2.2 million increase in Lead and traffic acquisition costs, $1.6 million in maintenance, depreciation and amortization of computer equipment and software, a $0.7 million increase in data and content and hosting services fees and a $0.3 million increase in personnel related expenses.

The increase in Lead and traffic acquisition costs was primarily due to an increase in the number of Leads acquired from our Network Websites, partially offset by a decrease in the average price per Lead acquired and a decline in spending with third parties who direct search queries to our websites. The increase in maintenance, depreciation and amortization of computer equipment and software was primarily related to the equipment and software associated with the full launch of MyRide.com. The increase in data and content and hosting services fees resulted from short-term increase in costs to migrate to a new data center in order to accommodate increased capacity requirements in connection with the launch of MyRide.com. The increase in personnel cost is primarily related to increased headcount.

Sales and Marketing. Sales and marketing expense increased by $1.4 million or 7% to $21.5 million in 2007 compared to $20.1 million in 2006. This represents 25% and 24% of total revenues from continuing operations for 2007 and 2006, respectively. The increase in sales and marketing expense was primarily due to a $0.4 million increase in advertising and promotional expenses, a $0.5 million increase in moving and relocation costs, and $0.3 million increase in research and professional fees and a $0.2 million increase in various other costs. The increases in advertising, research and professional fees were associated with the full launch of MyRide.com. The increase in moving and relocation costs is primarily due to the completion of relocation of certain new employees to our corporate headquarters.

Technology Support. Technology support costs increased by $0.6 million or 4% to $18.1 million in 2007 compared to $17.5 million in 2006. This represents 21% of total revenues from continuing operations for 2007 and 2006. The increase was primarily due to an increase of $1.0 million in computer equipment and software maintenance, depreciation and amortization costs and a $0.3 million increase in personnel related expenses. These increases were partially offset by a $0.2 million decrease in professional fees and a $0.5 million decrease in various other costs. The increase in computer equipment and software maintenance, depreciation and amortization costs is primarily related to costs incurred to maintain our existing technology and purchases of new computer equipment and capitalized software in 2007 required for our new data center. The increase in personnel related expenses is primarily due to severance costs and other benefits to employees affected by the reduction in workforce. The decrease in professional fees is primarily related to replacement of consultants with permanent employees following the launch of MyRide.com.

General and Administrative. General and administrative expense decreased by $12.1 million or 31% to $27.5 million in 2007 compared to $39.6 million in 2006. This represents 33% and 47% of total revenues from continuing operations for 2007 and 2006, respectively. The decrease was primarily due to:

- a decrease in legal fees of $11.1 million, of which $9.2 million was associated with enforcing our intellectual property rights and $1.9 million related to other legal matters,
- a decrease in professional fees to consultants and temporary personnel of $2.8 million due to replacement with full time employees, and
- a decreased in intangible asset amortization of $0.7 million. The decrease was associated with certain intangible assets being fully amortized.

These decreases were partially offset by an increase of:

- $1.0 million in costs associated with the settlement of litigation,
- $0.6 million in personnel related costs primarily due to severance payments to employees affected by the reduction in workforce,
$0.2 million in professional fees paid to third party research and survey companies,
$0.2 million in utilities,
$0.1 million in bad debt expense, and
$0.5 million in various other costs,

Patent Litigation Settlement. Patent litigation settlement relates to the deferred liability from the Dealix litigation settlement and represents initial cash payment of $12.0 million received in 2007.

Interest and Other Income. Interest and other income increased by $3.5 million or 150% to $5.9 million in 2007 compared to $2.4 million in 2006. The increase in interest and other income was primarily due to an increase of $4.0 million in international licensing fees representing cash received from a Japanese licensee as consideration for the sale of our remaining shares in such licensee. The carrying amount of our investment in the Japanese licensee was zero on the date of sale. In connection with the sale, we also amended the license agreement for certain intellectual property with such licensee to a term license to a perpetual royalty free license. This increase was partially offset by a $0.5 million decrease in interest income primarily due to a decrease in average invested cash and cash equivalents in 2007 compared to 2006.

Segment Information

We conduct our business within one business segment, which is defined as providing automotive marketing services.

Liquidity and Capital Resources

The table below sets forth a summary of our cash flows for the years ended December 31, 2008, 2007, and 2006:

<table>
<thead>
<tr>
<th>Years Ended December 31,</th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash used in operating activities</td>
<td>$19,998</td>
<td>$(6,908)</td>
<td>$(18,783)</td>
</tr>
<tr>
<td>Net cash provided by investing activities</td>
<td>19,141</td>
<td>9,610</td>
<td>6,636</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>649</td>
<td>2,156</td>
<td>1,537</td>
</tr>
</tbody>
</table>

Our principal sources of liquidity are from proceeds from dispositions of non-core businesses and the Dealix patent litigation settlement payments. We continue to have no debt. Our cash and cash equivalents totaled $27.4 million as of December 31, 2008 compared to cash and cash equivalents of $27.6 million as of December 31, 2007.

As discussed above, we entered into a settlement agreement with Dealix, which among other things, provides for settlement payments. We received settlement payments in 2007 and 2008. We have been unable to assess with reasonable assurance the collectability of the remaining payments under the settlement agreement as we do not have financial information to support the credit worthiness of the debtor or guarantor. We do not have reasonable assurance that we will receive any remaining payment on their due dates or at all, and therefore, we have not recorded any amounts receivable related to the Settlement Agreement as of December 31, 2008 and cannot rely on these payments as a source of future liquidity.

Net Cash Used in Operating Activities

Net cash used in operating activities in 2008 of $20 million resulted primarily from a net operating loss and an increase in our net working capital, partially offset by gains from the disposition of the AVV. The increase in working capital was primarily the result of a decrease in accounts payable and accrued expenses, and a net increase in accounts receivable. The net decrease in accounts payable and accrued expenses was primarily due to the timing of vendor and employee payments. The increase in accounts receivable is due to an increase in the days of sales outstanding (“DSO”) to 64 from 58 for the years ended December 31, 2008 and 2007, respectively, which was due to slower paying accounts during 2008.
Net cash used in operating activities in 2007 resulted primarily from an operating loss and an increase in working capital, partially offset by gains from the dispositions of the AIC operations and RPM business. The increase in working capital was primarily the result of a decrease in accounts payable and accrued expenses, a decrease in deferred revenues, a decrease in accounts receivable and an increase in other liabilities. The decrease in accounts payable and accrued expenses was primarily due to timing of vendor payments, including professional fees related to enforcing our intellectual property rights. Our standard payment terms for our invoices usually average 30 days net. The decrease in deferred revenues and the increase in other liabilities relate to a decline in delivery of advertising, which resulted from our recently implemented initiative to eliminate lower quality traffic sources. The decrease in accounts receivable is primarily due to collection efforts, timing of payments and clean-up of various outstanding amounts. Our 2007 net cash used in operations was better than 2006 due to the reduced operating loss and the impact of gains from discontinued operations in 2007.

Net cash used in operating activities in 2006 resulted primarily from an operating loss and a decrease in working capital. The decrease in working capital was primarily the result of a decrease in deferred revenue and an increase in accounts payable. The decrease in deferred revenue was primarily due to the change in billing monthly subscription fees for customers participating in our car buying referral networks from advance to arrears, offset by the deferral of revenue related to a multiple-element arrangement (see Note 2 of the “Notes to Consolidated Financial Statements” in Part II, Item 8, “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K. The increase in accounts payable was primarily due to the timing of when payments are made and an increase in professional fees incurred associated with the enforcement of our intellectual property rights and implementation of certain strategic initiatives.

Net Cash Provided by Investing Activities

Our primary uses and sources of cash in investing activities in 2008 were for the purchases of property and equipment (primarily information technology related equipment), and proceeds from divestitures, respectively. In 2007 and 2006, our primary sources of cash were through maturities of short-term investments and sale of money market and commercial paper marketable securities. During 2008 the maturities of our short term investments were 90 days or less, and are therefore classified as cash and cash equivalents.

Net cash provided by investing activities was $19.1 million, $9.6 million, and $6.6 million in 2008, 2007 and 2006, respectively. Net cash provided by investing activities in 2008 was primarily due to proceeds received from the sale of our AVV business, partially offset by the purchases of property and equipment and capitalized internal use software in connection with the development of MyRide.com. We anticipate a decrease in capital expenditures in 2009 compared to fiscal 2008.

Net cash provided by investing activities in 2006 was related to the maturity of investments in government sponsored agency bonds, offset by purchases of short-term investment in commercial paper and purchases of property and equipment.

Net Cash Provided (Used in) Financing Activities

Our primary source of cash from financing activities is from the exercise of stock options and the issuance of common stock pursuant to the employee stock purchase plan. Net cash provided by financing activities was $0.6 million, $2.2 million and $1.5 million in 2008, 2007 and 2006, respectively. Our future cash flows from employee stock options will depend on the future timing and amount of stock option exercises. Additionally, we suspended our employee stock purchase plan in the second half of 2008 and do not expect to receive any proceeds from the employee stock purchase plan in 2009.
Contractual Obligations

The following table provides aggregated information about our outstanding contractual obligations as of December 31, 2008:

\[
\begin{array}{cccccc}
\text{Years Ending December 31,} & 2009 & 2010 & 2011 & 2012 & 2013 \text{ and thereafter} & \text{Total} \\
\text{(in thousands)} & & & & & & \\
\hline
\text{Operating leases (a)} & $900 & $658 & $320 & $ & $ & $1,878 \\
\text{Purchase obligations (b)} & 946 & 511 & 52 & & & 1,509 \\
\text{Total} & $1,846 & $1,169 & $372 & & & $3,387 \\
\hline
\end{array}
\]

(a) Operating lease obligations as defined by SFAS 13, “Accounting for Leases,” and disclosed in Note 6 of the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

(b) Purchases obligations are agreements to purchase goods and services that are enforceable and legally binding that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

Prospective Capital Needs. We experienced substantial negative cash flow in 2008 and at December 31, 2008 had an accumulated deficit of $271 million. Based on our current operating plan for 2009, it is expected that net cash used in operating activities will be negative, but significantly improved from 2008. The dramatic decline in the automotive industry during 2008 had a substantial negative effect on our cash flows.

We continue to face many risks and uncertainties related to general economic conditions and the automotive industry in particular, however, we believe current cash and cash equivalents are sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

Off-Balance Sheet Arrangements

We do not have any material off-balance sheet arrangements.

Critical Accounting Policies and Estimates

We prepare our financial statements in conformity with accounting principles generally accepted in the United States of America, which requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. We believe the following critical accounting policies, among others, require significant judgment in determining estimates and assumptions used in the preparation of our consolidated financial statements. Accordingly, actual results could differ materially from our estimates. To the extent that there are material differences between these estimates and our actual results, our financial condition or results of operations may be affected. For a detailed discussion of the application of these and other accounting policies, see Note 2 of the “Notes to Consolidated Financial Statements” in Part II, Item 8 “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K.

Revenue Recognition. In accordance with Staff Accounting Bulletin (“SAB”) No. 104, “Revenue Recognition,” we recognize revenues when evidence of an arrangement exists, pricing is fixed and determinable, collection is reasonably assured, and delivery or performance of service has occurred. Lead fees and finance request fees are generally recognized as revenue in the period the service is provided. Advertising revenues are generally recognized in the period the advertisements are displayed on the websites. Fees billed prior to providing services are deferred, as they do not satisfy all of the revenue recognition criteria in SAB No. 104. Deferred revenues are recognized as revenue over the periods services are provided.

Lead fees consist of car buying purchase request fees for new and used cars, and finance request fees. Fees for car buying purchase requests are paid by retail dealers, enterprise and automotive manufacturers or their automotive buying service affiliates who participate in our online car buying referral networks. Enterprise dealers consist of (i) dealers that are part of major dealer groups with more than 25 dealerships with whom the Company has a single agreement and (ii) dealers that are eligible to receive purchase requests from us as part of a single agreement with an automotive manufacturer or its automotive buying service affiliate. Fees paid by customers participating in our car buying referral networks are comprised of monthly transaction and/or subscription fees for consumer leads, or purchase requests, which are directed to participating dealers. These monthly subscription and transaction fees are recognized in the period service is provided.

Lead fees also include fees paid by retail dealers, finance request intermediaries, and automotive finance companies who participate in our Car.com finance referral network. Customers participating in our Car.com finance referral network pay ongoing monthly subscription fees or transaction fees based on the number of finance requests provided to them each month. The fees are recognized in the period the service is provided.

Advertising revenues represent fees from automotive manufacturers and other advertisers who target car buyers during the research, consideration and decision making process on our websites, as well as through direct marketing offerings. Advertising revenues are recognized in the period the advertisements are displayed on the websites.

We also apply the revenue recognition criteria for certain contracts in accordance with EITF 00-21, “Revenue Arrangements with Multiple Deliverables.” In accounting for multiple-element arrangements, one key judgment to be made is the accounting valuation that is attributable to the different contractual elements. The appropriate allocation of value impacts the amount and timing of revenue recorded in the Consolidated Statement of Operations and Comprehensive Loss. Revenue is allocated to each element based on the accounting determination of the relative fair value of that element to the aggregate fair value of all elements, or alternatively deferred revenue may be computed based on the fair value of the undelivered elements. The fair values must be reliable, verifiable and objectively determinable. When available, such determination is based principally on the pricing of the same elements with unrelated parties that are not part of a multiple-element arrangement. When sufficient evidence of the fair values of the individual elements does not exist, revenue is not allocated among them until that evidence exists. Instead, the revenue is recognized as earned using revenue recognition principles applicable to the entire arrangement as if it were a single element arrangement. We did not have deferred revenue under a multiple-element arrangement at December 31, 2008 or 2007. No revenue was recognized under these arrangements for the year ended December 31, 2008. Revenue recognized under a multiple element arrangement totaled $1.4 million and $0.9 million for the years ended December 31, 2007 and 2006, respectively.
Short-Term Investments

We categorize our equity securities as available-for-sale in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 115, “Accounting for Certain Investments in Debt and Equity Securities.” We review our investments in equity and debt securities for potential impairment on a regular basis. As part of the evaluation process of individual securities classified as available-for-sale, we review factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and our intent and ability to hold the investment for a period of time which may be sufficient for anticipated recovery in market value. We will record an impairment loss on investments for any other-than-temporary decline in fair value of these investments below their cost basis.

Allowances for Bad Debt and Customer Credits. We estimate and record allowances for potential bad debts and customer credits based on factors such as the write-off percentages, the current business environment and known concerns within our accounts receivable balances, which is consistent with our past practice.

The allowance for bad debts is our estimate of bad debt expense that could result from the inability or refusal of our customers to pay for our services. Additions to the estimated allowance for bad debts are recorded as an increase in general and administrative expenses and are based on factors such as historical write-off percentages, the current business environment and the known concerns within the current aging of accounts receivable. Reductions in the estimated allowance for bad debts due to subsequent cash recoveries are recorded as a decrease in general and administrative expenses. As specific bad debts are identified, they are written-off against the previously established estimated allowance for bad debts and have no impact on operating expenses.

The allowance for customer credits is our estimate of adjustments for services that do not meet our customers’ requirements. Additions to the estimated allowance for customer credits are recorded as a reduction in revenues and are based on historical experience of: (i) the amount of credits issued; (ii) the length of time after services are rendered that the credits are issued; and (iii) other factors known at the time. Reductions in the estimated allowance for customer credits are recorded as an increase in revenues. As specific customer credits are identified, they are written-off against the previously established estimated allowance for customer credits and have no impact on revenues.

If there is a decline in the general economic environment that negatively affects the financial condition of our customers or an increase in the number of customers that are dissatisfied with our services, additional estimated allowances for bad debts and customer credits may be required and the impact on our business, results of operations or financial condition could be material.

Contingencies. We are subject to proceedings, lawsuits and other claims. We are required to assess the likelihood of any adverse judgments or outcomes of these matters as well as potential ranges of probable losses. We are required to record a loss contingency when an unfavorable outcome is probable and the amount of the loss can be reasonably estimated. The amount of allowances required, if any, for these contingencies is determined after analysis of each individual case. The amount of allowances may change in the future if there are new material developments in each matter. At December 31, 2008, we did
not record any allowances for contingencies. Gain contingencies are not recorded until all elements necessary to realize the revenue are present. Any legal fees incurred in connection with a contingency are expensed as incurred.

**Fair Value of Financial Instruments.** The estimated fair values of our financial instruments, such as cash, cash equivalents, accounts receivable and accounts payable are carried at cost, which approximates their fair value because of the short-term maturity of these instruments.

**Share-Based Compensation Expense.** We account for our share-based compensation using the fair value method as required by Statement of Financial Accounting Standards (“SFAS”) No. 123(R), “Share-Based Payment” (“SFAS 123(R)”). Under the fair value recognition provisions of SFAS 123(R), we recognize share-based compensation net of an estimated forfeiture rate and therefore only recognize compensation cost for those shares expected to vest over the service period of the award. The fair value of each stock option award is estimated on the date of grant using the Black-Scholes option pricing model based on the underlying common stock closing price as of the date of grant, the expected term, expected stock price volatility, and expected risk-free interest rates.

Calculating share-based compensation expense requires the input of highly subjective assumptions, including the expected term of the share-based awards, expected stock price volatility, and expected pre-vesting option forfeitures. We estimate the expected life of options granted based on historical exercise patterns, which we believe are representative of future behavior. We estimate the volatility of the price of our common stock at the date of grant based on historical volatility of the price of our common stock for a period equal to the expected term of the awards. We have used historical volatility because we have a limited number of options traded on our common stock to support the use of an implied volatility or a combination of both historical and implied volatility. The assumptions used in calculating the fair value of share-based awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different from what we have recorded in the current period.

**Income Taxes.** We account for income taxes under the liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. We record a valuation allowance, if necessary, to reduce deferred tax assets to an amount we believe is more likely than not to be realized. During the current period, we continued to maintain a full valuation allowance against our net deferred tax asset.

As of December 31, 2008, we had $0.5 million of unrecognized tax benefits. These unrecognized tax benefits reduced our deferred tax assets which were subject to a valuation allowance of $0.5 million. There were no material changes to our uncertain tax positions during the current period.

Our policy is to recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2008 we did not have any accrued interest or penalties associated with any unrecognized tax benefits, nor were any interest expense recognized in 2008.

**Impairment of goodwill.** In accordance with SFAS No. 142, “Goodwill and Other Intangible Assets,” goodwill and other intangible assets with indefinite lives are no longer subject to amortization but are tested for impairment annually or whenever events or changes in circumstances indicate that the asset might be impaired. During 2008 we performed our annual impairment test by first comparing the carrying value of Autobytel to its fair value based on market capitalization at that

33
As the carrying value exceeded the fair value, the second step impairment measurement was performed based on a discounted projection of future cash flows and market methods of determining fair value. As a result of this testing, the entire goodwill balance of $52.1 million was impaired and written-off as an expense in 2008.

**Impairment of long-lived assets and other intangible assets.** We periodically review long-lived assets to determine if there is any impairment of these assets. We assess 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. Our judgments regarding the existence of impairment indicators are based on legal factors, market conditions and operational performance of our long-lived assets and other intangibles. Future events could cause us to conclude that impairment indicators exist and that the assets should be reviewed to determine their fair value. We assess 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. If the carrying amount of an asset exceeds 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 many assumptions and estimates. Once the valuation is determined, we will write-down these assets to their determined fair value, if necessary. Any write-down could have a material adverse effect on our financial condition and results of operations. During 2008 we recorded $5.5 million of impairment charges. The charges were comprised of (i) impairment charges of $4.3 million to reduce the net book value of certain capitalized software related to the MyRide website to its estimated fair value, and (ii) an impairment of $1.2 million associated with the write-off of capitalized software projects that are no longer being developed or expected to be placed in service for their intended use. At December 31, 2008 we had approximately $2.4 million of remaining long-lived assets that could be subject to future impairment.

**Recent Accounting Pronouncements**

**SFAS 157:** In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standard (“SFAS”) 157, “Fair Value Measurements.” SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position (“FSP”) FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 did not have an impact on Autobytel’s consolidated financial position, results of operations or cash flows, and the deferred portion of SFAS 157 that will be adopted by Autobytel on January 1, 2009 is not expected to have a material impact on our consolidated financial statements.

**SFAS 159:** In February 2007, the FASB issued SFAS 159, “The Fair Value Option for Financial Assets and Financial Liabilities.” SFAS 159 provides a fair value option that allows companies to measure certain financial instruments, on an instrument by instrument basis, at fair value, and is effective for financial instruments issued for periods beginning after November 15, 2007. Since the Company adopted SFAS 159 as of January 1, 2008 and did not elect the fair value option to measure certain financial instruments, SFAS 159 did not have an impact on our consolidated financial statements.

**FIN 48:** In June 2006, the FASB issued Interpretation 48 (“FIN 48”) (As Amended) “Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109” which prescribes a recognition threshold and measurement process for recording in the financial statements uncertain tax positions taken or expected to be taken in a tax return. FIN 48 requires that a company recognize the financial statement effects of a tax position when there is a likelihood of more than 50 percent, based on the technical merits, that the position will be sustained upon examination. It also provides guidance on the derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition requirements for uncertain tax positions. We adopted the provisions of FIN 48 on January 1, 2007. The
following table shows the reconciliation of the total amounts of unrecognized tax benefits for 2007 (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrecognized tax benefit – opening balance</td>
<td>$ 500</td>
</tr>
<tr>
<td>Gross increases or decreases – current period</td>
<td>—</td>
</tr>
<tr>
<td>Settlements</td>
<td>—</td>
</tr>
<tr>
<td>Lapse of statute of limitations</td>
<td>—</td>
</tr>
<tr>
<td><strong>Unrecognized tax benefit</strong></td>
<td><strong>$ 500</strong></td>
</tr>
</tbody>
</table>

Upon adoption of FIN 48, we analyzed our filing positions for all open tax years in all U.S. federal and state jurisdictions where we are required to file tax returns. At the adoption date of January 1, 2007, we had $0.5 million of unrecognized tax benefits. Of the total unrecognized tax benefits at the adoption date, the entire amount of $0.5 million was recorded as a reduction to deferred tax assets, which caused a corresponding reduction in our valuation allowance of $0.5 million. To the extent such portion of unrecognized tax benefits is recognized at a time such valuation allowance no longer exists, the recognition would impact our effective tax rate.

We file income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, we are no longer subject to U.S. federal and state tax examinations for years prior to 2003. We do not believe there will be any material changes in our unrecognized tax positions over the next 12 months. Therefore, no reserves for uncertain income tax positions have been recorded pursuant to FIN 48. In addition, we did not record a cumulative effect adjustment related to the adoption of FIN 48 and the adoption of FIN 48 did not have a material effect on our consolidated financial position or results of operations.

Our policy is to recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of the date of adoption and December 31, 2007, we did not have any accrued interest or penalties associated with any unrecognized tax benefits, nor were any interest expense amounts recognized in the year ended December 31, 2007.

**SFAS 161:** In March 2008, the FASB issued SFAS 161, “Disclosures about derivative Instruments and Hedging Activities—an Amendment of FASB Statement 133.” SFAS 161 provides new disclosure requirements for derivative and hedging activities, and is effective for periods beginning after November 15, 2008. Our adoption of SFAS 161 on January 1, 2009 is not expected to have a material effect on our consolidated financial statements.

**SFAS 160:** In December 2007, the FASB issued SFAS 160, “Non-controlling Interests in Consolidated Financial Statements—an amendment of ARB 51.” This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since we have no non-controlling interest in our subsidiaries, the adoption of SFAS 161 on January 1, 2009 is not expected to have any effect on our consolidated financial statements.

**SFAS 141(R):** In December 2007, the FASB issued SFAS No. 141R, “Business Combinations.” SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on our consolidated financial statements will depend on the nature, terms and size of acquisitions, if any, we may consummate subsequent to the effective date of January 1, 2009.

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

At December 31, 2008 we had $27.4 million in cash and cash equivalents (“Cash”) and we had a common stock investment in one publicly held company that is classified as available-for-sale of $0.6 million.
We maintain our Cash in a portfolio of security holdings with maturities of 90 days or less at the date of purchase. We invest our cash and cash equivalents in instruments that meet credit quality standards, as specified in our investment policy guidelines. We invest in U.S. Government sponsored or backed obligations, commercial paper, money market funds, and certificates of deposits.

Investments in both fixed rate and floating rate instruments carry some degree of interest rate risk. Fixed rate securities may have their market value adversely impacted due to an increase in interest rates, while floating rate securities may produce less income than expected if interest rates fall. Due in part to these factors, our future investment income may fall short of expectations due to changes in interest rates. We may suffer losses in principal if we are forced to sell securities that have declined in market value due to changes in interest rates. In a declining interest rate environment, as short term investments mature, reinvestment occurs at less favorable market rates. Given the short term nature of our cash and cash equivalents amounts, interest rate risk is not significant.

The current economic conditions have had widespread negative effects on the financial markets. Due to credit concerns and lack of liquidity in the short-term funding markets, we have shifted a larger percentage of the portfolio to U.S. Government sponsored or backed securities and money market funds, which may negatively impact our investment income, particularly in the form of declining investment yields.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Balance Sheets as of December 31, 2008 and 2007 and our Consolidated Statements of Operations and Comprehensive Loss, Stockholders’ Equity and Cash Flows for each of the years in the three-year period ended December 31, 2008, together with the reports of our independent registered public accounting firms, begin on page F-1 of this Annual Report on Form 10-K and are incorporated herein by reference.

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

None.
Disclosure Controls and Procedures

We have established and maintain disclosure controls and procedures that are designed to ensure that material information relating to the Company and its subsidiaries required to be disclosed by us in the reports that are filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported in the time periods specified in the SEC’s rules and forms, and that this information is accumulated and communicated to our management, including our Chief Executive and Chief Financial Officers, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only a reasonable assurance of achieving the desired control objectives, and management was necessarily required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive and Financial Officers, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as of December 31, 2008. Based on this evaluation, the Chief Executive and Financial Officers concluded that the Company’s disclosure controls and procedures were effective as of December 31, 2008.

Management’s Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) under the Securities Exchange Act of 1934, as amended. Under the supervision and with the participation of management, including the Company’s Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of the Company’s internal control over financial reporting as of December 31, 2008. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In making this assessment, management used the criteria set forth in the framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) entitled Internal Control—Integrated Framework. Based on this evaluation, management has concluded that the Company’s internal control over financial reporting was effective as of December 31, 2008.

The effectiveness of our internal control over financial reporting as of December 31, 2008 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report as set forth below in this Annual Report on Form 10-K.

Changes in Internal Control Over Financial Reporting

There have been no changes in internal controls over financial reporting identified in connection with the evaluation required by paragraph (d) of Rules 13a-15 of the Securities Exchange Act of 1934 that have occurred during the fourth quarter of fiscal year 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.
Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Autobytel Inc.

We have audited Autobytel Inc.’s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Autobytel Inc.’s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Autobytel Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying consolidated balance sheet of Autobytel Inc. as of December 31, 2008, and the related consolidated statements of operations and comprehensive loss, stockholders’ equity, and cash flows for the year ended December 31, 2008 of Autobytel Inc. and our report dated March 11, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Orange County, California
March 11, 2009
Item 9B. Other Information

None.
PART III

Item 10  Directors, Executive Officers and Corporate Governance
The information called for by this Item 10 is incorporated by reference to the following sections of our definitive Proxy Statement for our 2009 Annual Meeting of Stockholders that will be filed not later than 120 days after December 31, 2008, (“2009 Proxy Statement”) “Directors,” “Nominees for Class I Directors,” “Other Directors,” “Code of Conduct and Ethics,” “Management,” “Attendance at Meetings and Board Committees” and “Section 16(a) Beneficial Ownership Reporting Compliance.”

Item 11  Executive Compensation
The information called for in this Item 11 is incorporated by reference to the following sections of the 2009 Proxy Statement: “Executive Compensation,” “Compensation Committee Interlocks and Insider Participation,” and “Compensation Committee Report.”

Item 12  Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters
The information called for in this Item 12 is incorporated by reference to the following sections of the 2009 Proxy Statement: “Security Ownership of Owners and Certain Beneficial Management” and “Securities Authorized for Issuance Under Equity Compensation Plans.”

Item 13  Certain Relationships and Related Transactions, and Director Independence
The information called for in this Item 13 is incorporated by reference to the following sections of the 2009 Proxy Statement: “Certain Relationships and Related Transactions” and “Director Independence.”

Item 14  Principal Accountant Fees and Services
The information called for in this Item 14 is incorporated by reference to the following sections of the 2009 Proxy Statement: “Principal Accountant Fees and Services,” “Audit Related Fees,” “Tax Fees,” “All Other Fees,” and “Pre-Approval Policy.”
Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as a part of this Annual Report on Form 10-K:

(1) Financial Statements:

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index</td>
<td>F-1</td>
</tr>
<tr>
<td>Report of Independent Registered Public Accounting Firm</td>
<td>F-2</td>
</tr>
<tr>
<td>Consolidated Balance Sheets</td>
<td>F-4</td>
</tr>
<tr>
<td>Consolidated Statements of Operations and Comprehensive Loss</td>
<td>F-5</td>
</tr>
<tr>
<td>Consolidated Statements of Stockholders’ Equity</td>
<td>F-6</td>
</tr>
<tr>
<td>Consolidated Statements of Cash Flows</td>
<td>F-7</td>
</tr>
<tr>
<td>Notes to Consolidated Financial Statements</td>
<td>F-8</td>
</tr>
</tbody>
</table>

(2) Financial Statement Schedules:

| Schedule II—Valuation and Qualifying Accounts                          | F-27 |

All other schedules have been omitted since the required information is presented in the financial statements and the related notes or is not applicable.

(3) Exhibits:

The exhibits filed or furnished as part of this Annual Report on Form 10-K are listed in the Index to Exhibits immediately preceding such exhibits, which Index to Exhibits is incorporated herein by reference.
SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 13th day of March, 2009.

AUTOBYTEL INC.

By: /s/ JEFFREY H. COATS
Jeffrey H. Coats
President, Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each of Autobytel Inc., a Delaware corporation, and the undersigned Directors and Officers of Autobytel Inc. hereby constitute and appoint Jeffrey H. Coats, Curtis E. DeWalt or Glenn Fuller as its or his true and lawful attorneys-in-fact and agents, for it or him and in its or his name, place and stead, in any and all capacities, with full power to act alone, to sign any and all amendments to this report, and to file each such amendment to this report, with all exhibits thereto, and any and all documents in connection therewith, with the Securities and Exchange Commission, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in connection therewith, as fully to all intents and purposes as it or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them may lawfully do or cause to be done by virtue hereof.

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

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ MICHAEL J. FUCHS</td>
<td>Chairman of the Board and Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Michael J. Fuchs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JEFFREY H. COATS</td>
<td>President, Chief Executive Officer and Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Jeffrey H. Coats</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ CURTIS E. DEWALT</td>
<td>Senior Vice President and Chief Financial Officer</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Curtis E. DeWalt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ WESLEY OZIMA</td>
<td>Vice President and Controller (Principal Accounting Officer)</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Wesley Ozima</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MARK N. KAPLAN</td>
<td>Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Mark N. Kaplan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MARK R. ROSS</td>
<td>Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Mark R. Ross</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JEFFREY M. STIBEL</td>
<td>Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Jeffrey M. Stibel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JANET M. THOMPSON</td>
<td>Director</td>
<td>March 13, 2009</td>
</tr>
<tr>
<td>Janet M. Thompson</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Table of Contents</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Reports of Independent Registered Public Accounting Firms</td>
<td>F-2</td>
<td></td>
</tr>
<tr>
<td>Consolidated Balance Sheets</td>
<td>F-4</td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Operations and Comprehensive Loss</td>
<td>F-5</td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Stockholders' Equity</td>
<td>F-6</td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Cash Flows</td>
<td>F-7</td>
<td></td>
</tr>
<tr>
<td>Notes to Consolidated Financial Statements</td>
<td>F-8</td>
<td></td>
</tr>
</tbody>
</table>

F-1
Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Autobytel Inc.

We have audited the accompanying consolidated balance sheet of Autobytel Inc. as of December 31, 2008, and the related consolidated statements of operations and comprehensive loss, stockholders’ equity, and cash flows for the year ended December 31, 2008. Our audit also included the financial statement schedule for the year ended December 31, 2008 listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Autobytel Inc. at December 31, 2008, and the consolidated results of its operations and its cash flows for the year ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule for the year ended December 31, 2008, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Autobytel Inc.’s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 11, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Orange County, California
March 11, 2009

F-2
Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
Autobytel Inc. and Subsidiaries
Irvine, California

We have audited the consolidated balance sheet of Autobytel Inc. and subsidiaries (the Company) as of December 31, 2007, and the related consolidated statements of operations and comprehensive loss, stockholders’ equity and cash for each of the two years then ended. Our audits also include the consolidated financial statement schedule listed in item 15(a). These consolidated financial statements and financial statement schedule is the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2007, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2007, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/S/ McGladrey & Pullen, LLP

Irvine, California
March 17, 2008
## AUTOBYTEL INC.

### CONSOLIDATED BALANCE SHEETS
(in thousands, except per-share and share data)

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2008</th>
<th>December 31, 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CURRENT ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$27,393</td>
<td>$27,601</td>
</tr>
<tr>
<td>Accounts receivable, net of allowances for bad debts and customer credits of $1,277 and $534 at December 31, 2008 and 2007, respectively</td>
<td>$10,047</td>
<td>$11,692</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>$1,378</td>
<td>$1,739</td>
</tr>
<tr>
<td>Assets held for sale</td>
<td>—</td>
<td>$17,160</td>
</tr>
<tr>
<td>Total current assets</td>
<td>$38,818</td>
<td>$58,192</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>$2,421</td>
<td>$10,757</td>
</tr>
<tr>
<td>Goodwill</td>
<td>—</td>
<td>$52,074</td>
</tr>
<tr>
<td>Investment and other assets</td>
<td>$763</td>
<td>$1,133</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$42,002</td>
<td>$122,156</td>
</tr>
</tbody>
</table>

|                  |                   |                   |
| **LIABILITIES AND STOCKHOLDERS’ EQUITY** |                   |                   |
| **CURRENT LIABILITIES** |                   |                   |
| Accounts payable | $3,579 | $5,852 |
| Accrued expenses and other current liabilities | $6,432 | $7,669 |
| Deferred revenues | $1,835 | $1,749 |
| Current liabilities held for sale | — | $198 |
| Total current liabilities | $11,846 | $15,468 |
| Non-current liabilities | $181 | $436 |
| **TOTAL LIABILITIES**  | $12,027 | $15,904 |

|                  |                   |                   |
| **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; 45,219,679 and 43,788,633 shares issued and outstanding at December 31, 2008 and 2007, respectively | $45 | $44 |
| Additional paid-in capital | $300,720 | $296,964 |
| Accumulated other comprehensive income | $568 | $686 |
| Accumulated deficit | $(271,358) | $(191,442) |
| **TOTAL STOCKHOLDERS’ EQUITY**  | $29,975 | $106,252 |

|                  |                   |                   |
| **TOTAL LIABILITIES AND STOCKHOLDERS’ EQUITY** |                   |                   |
|                  | $42,002 | $122,156 |

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

F-4
AUTOBYTEL INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except per-share data)

<table>
<thead>
<tr>
<th></th>
<th>Years Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
</tr>
<tr>
<td><strong>REVENUES:</strong></td>
<td></td>
</tr>
<tr>
<td>Lead fees</td>
<td>$63,169</td>
</tr>
<tr>
<td>Advertising</td>
<td>7,794</td>
</tr>
<tr>
<td>Other revenues</td>
<td>196</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>$71,159</td>
</tr>
<tr>
<td><strong>COSTS AND EXPENSES:</strong></td>
<td></td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>51,384</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>17,043</td>
</tr>
<tr>
<td>Technology support</td>
<td>16,003</td>
</tr>
<tr>
<td>General and administrative</td>
<td>22,977</td>
</tr>
<tr>
<td>Patent litigation settlement</td>
<td>(2,667)</td>
</tr>
<tr>
<td>Goodwill impairment</td>
<td>52,074</td>
</tr>
<tr>
<td><strong>Total costs and expenses</strong></td>
<td>156,814</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(85,655)</td>
</tr>
<tr>
<td>Interest and other income</td>
<td>1,346</td>
</tr>
<tr>
<td>Foreign currency exchange loss</td>
<td>—</td>
</tr>
<tr>
<td>Income taxes benefit</td>
<td>—</td>
</tr>
<tr>
<td>Minority interest</td>
<td>—</td>
</tr>
<tr>
<td>Loss from continuing operations</td>
<td>(84,309)</td>
</tr>
<tr>
<td>Discontinued operations, net</td>
<td>4,393</td>
</tr>
<tr>
<td><strong>NET LOSS</strong></td>
<td>$(79,916)</td>
</tr>
<tr>
<td><strong>BASIC AND DILUTED LOSS PER COMMON SHARE:</strong></td>
<td></td>
</tr>
<tr>
<td>Loss from continuing operations</td>
<td>$(1.91)</td>
</tr>
<tr>
<td>Discontinued operations, net</td>
<td>0.10</td>
</tr>
<tr>
<td>Basic and diluted loss per common share</td>
<td>$(1.81)</td>
</tr>
<tr>
<td><strong>Comprehensive loss:</strong></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(79,916)</td>
</tr>
<tr>
<td>Unrealized (loss) gain from investment</td>
<td>(118)</td>
</tr>
<tr>
<td><strong>Comprehensive loss</strong></td>
<td>$(80,034)</td>
</tr>
</tbody>
</table>

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

F-5
### Table of Contents

**AUTOBYTEL INC.**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS’ EQUITY**

*(in thousands, except share data)*

<table>
<thead>
<tr>
<th>Common Stock</th>
<th>Additional Paid-In Capital</th>
<th>Accumulated Other Comprehensive Income (Loss)</th>
<th>Accumulated Deficit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance, December 31, 2005</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Shares</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>42,133,410</td>
<td>$42</td>
<td>$282,924</td>
<td></td>
<td>$154,619</td>
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<tr>
<td><strong>Issuance of common stock upon exercise of stock options</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>413,167</td>
<td>1</td>
<td>1,132</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issuance of common stock under employee stock purchase plan</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>119,264</td>
<td></td>
<td>404</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Share-based compensation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>5,402</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Adjustment for fractional shares on exchange of Autoweb shares for</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Autoweb shares</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td></td>
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<tr>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Balance, December 31, 2006</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Shares</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>42,665,840</td>
<td>43</td>
<td>289,862</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issuance of common stock upon exercise of stock options</strong></td>
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<td></td>
<td></td>
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<tr>
<td>1,014,412</td>
<td>1</td>
<td>2,032</td>
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<tr>
<td><strong>Issuance of common stock under employee stock purchase plan</strong></td>
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<tr>
<td>108,381</td>
<td></td>
<td>307</td>
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<tr>
<td><strong>Share-based compensation</strong></td>
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<tr>
<td></td>
<td></td>
<td>4,763</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Unrealized gain from investment</strong></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td><strong>Net loss</strong></td>
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<tr>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Balance, December 31, 2007</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Shares</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43,788,633</td>
<td>44</td>
<td>296,964</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shares issued pursuant to stock awards, net</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1,340,000</td>
<td>1</td>
<td>511</td>
<td></td>
<td></td>
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<tr>
<td><strong>Issuance of common stock under employee stock purchase plan</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>91,046</td>
<td></td>
<td>137</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Share-based compensation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,108</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Unrealized gain from investment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balance, December 31, 2008</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Shares</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>45,219,679</td>
<td>$45</td>
<td>$300,720</td>
<td></td>
<td>$271,358</td>
</tr>
</tbody>
</table>

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

F-6
AUTOBYTEL INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

<table>
<thead>
<tr>
<th>Years Ended December 31</th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(79,916)</td>
<td>$(5,355)</td>
<td>$(31,468)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash used in operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>4,933</td>
<td>4,155</td>
<td>3,686</td>
</tr>
<tr>
<td>Provision for bad debt</td>
<td>1,443</td>
<td>401</td>
<td>391</td>
</tr>
<tr>
<td>Provision for customer credits</td>
<td>1,295</td>
<td>1,321</td>
<td>1,645</td>
</tr>
<tr>
<td>Write-off of capitalized software</td>
<td>5,512</td>
<td>—</td>
<td>264</td>
</tr>
<tr>
<td>(Gain) loss on disposal of property and equipment</td>
<td>—</td>
<td>(1)</td>
<td>111</td>
</tr>
<tr>
<td>Gain on business and asset divestitures</td>
<td>(4,204)</td>
<td>(10,323)</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>3,108</td>
<td>4,753</td>
<td>5,397</td>
</tr>
<tr>
<td>Minority interest</td>
<td>—</td>
<td>—</td>
<td>21</td>
</tr>
<tr>
<td>Foreign currency exchange loss (gain)</td>
<td>—</td>
<td>7</td>
<td>(22)</td>
</tr>
<tr>
<td>Loss on goodwill impairment</td>
<td>52,074</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Changes in assets and liabilities, net of the effects of discontinued operations:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(986)</td>
<td>1,457</td>
<td>(244)</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>328</td>
<td>141</td>
<td>635</td>
</tr>
<tr>
<td>Investment and other assets</td>
<td>85</td>
<td>52</td>
<td>(73)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(2,278)</td>
<td>(2,535)</td>
<td>2,754</td>
</tr>
<tr>
<td>Accrued expenses and other current liabilities</td>
<td>(1,483)</td>
<td>(590)</td>
<td>(516)</td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>91</td>
<td>(391)</td>
<td>(1,364)</td>
</tr>
<tr>
<td><strong>Net cash used in operating activities</strong></td>
<td>(19,998)</td>
<td>(6,908)</td>
<td>(18,783)</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maturities of short-term investments</td>
<td>14,050</td>
<td>3,000</td>
<td>14,998</td>
</tr>
<tr>
<td>Purchases of short-term investments</td>
<td>(14,050)</td>
<td>—</td>
<td>(2,998)</td>
</tr>
<tr>
<td>Distribution from foreign investment</td>
<td>—</td>
<td>354</td>
<td>—</td>
</tr>
<tr>
<td>Change in restricted cash and cash equivalents</td>
<td>—</td>
<td>(97)</td>
<td>—</td>
</tr>
<tr>
<td>Purchases of property and equipment</td>
<td>(2,255)</td>
<td>(7,647)</td>
<td>(5,282)</td>
</tr>
<tr>
<td>Proceeds from sale of property and equipment</td>
<td>—</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Proceeds from divestitures</td>
<td>21,396</td>
<td>13,901</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net cash provided by investing activities</strong></td>
<td>19,141</td>
<td>9,610</td>
<td>6,636</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distribution to minority interest shareholder</td>
<td>—</td>
<td>(184)</td>
<td>—</td>
</tr>
<tr>
<td>Net proceeds from exercise of stock options and awards issued under the employee stock purchase plan</td>
<td>649</td>
<td>2,340</td>
<td>1,537</td>
</tr>
<tr>
<td><strong>Net cash provided by financing activities</strong></td>
<td>649</td>
<td>2,156</td>
<td>1,537</td>
</tr>
<tr>
<td><strong>Net increase (decrease) in cash and cash equivalents</strong></td>
<td>(208)</td>
<td>4,858</td>
<td>(10,610)</td>
</tr>
<tr>
<td>Cash and cash equivalents, beginning of period</td>
<td>27,601</td>
<td>22,743</td>
<td>33,353</td>
</tr>
<tr>
<td>Cash and cash equivalents, end of period</td>
<td>$27,393</td>
<td>$27,601</td>
<td>$22,743</td>
</tr>
<tr>
<td><strong>Supplemental disclosure of cash flow information:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash paid during the period for income taxes</td>
<td>$119</td>
<td>$85</td>
<td>$465</td>
</tr>
</tbody>
</table>

**Supplemental disclosure of non-cash investing and financing activities:**

- Non-cash investing activities in 2007 included $0.7 million of an investment in available for sale securities.

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

F-7
1. Organization and Operations of Autobytel

Autobytel Inc. ("Autobytel" or the "Company") is an automotive marketing services company that assists automotive dealers and manufacturers sell cars. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and on-line advertising, the Company provides automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. The Company purchases from third parties and generates from its own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing (these consumer internet requests are referred to in these Notes on Form 10-K as "Leads"). The Company sells the Leads primarily to its automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites, such as Edmunds, AOL, Kelley Blue Book, and Yahoo, ("Network Websites"). These Network Websites provide substantially all of the Company’s Leads. Additionally, the Company owns and operates consumer-facing automotive websites, including Autobytel®, Autoweb®, AutoSite®, Car.com®, CarSmart.com®, CarTV.com®, and MyRide.com® that provide consumers with information and tools to aid them with their automotive purchase decisions. The Company’s owned websites provide a small percentage of its Leads and a significant portion of its page views for the advertising component of its advertising business. In addition to its websites, The Company provides advertising opportunities for automotive manufacturers and other automotive advertisers through its marketing network, which includes its AutoReach advertising network ("Ad Network") and co-branded websites, such as ESPN.com.

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 experienced substantial negative cash flow in 2008 and at December 31, 2008 had an accumulated deficit of $271 million. Based on the Company’s current operating plan for 2009, it is expected that net cash used in operating activities will be negative, but significantly improved from 2008. The dramatic decline in the automotive industry during 2008 had a substantial negative effect on cash flows. As a result of these factors, as well as decisions taken by management, the Company recorded the following significant items during 2008:

- Impairment of goodwill of $52.1 million (See Note 2),
- Impairment of the MyRide website software and one other software project of $5.5 million (See Note 3), and
- Severance and other expenses related to the Company’s cost reduction initiatives of $6.9 million (See Note 9).

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. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements include the accounts of the Company and its wholly and majority owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

The Company sold certain assets and liabilities of its Automotive Information Center ("AIC") data operations on January 31, 2007, sold its wholly-owned subsidiary, Retention Performance Marketing, Inc., ("RPM") on June 30, 2007, and sold certain assets and liabilities of its AVV Inc. ("AVV") business on January 23, 2008, collectively the "Divestitures" (See Note 4). Accordingly, the Divestitures are presented in the Consolidated Statements of Operations and Comprehensive Loss as discontinued operations. As discontinued operations, revenues and expenses of the Divestitures are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs of the Divestures that will be eliminated from future operations. Assets and liabilities that were included in the sale of the AVV business have been aggregated and classified as held for sale under current assets and current liabilities in the Company’s Consolidated Balance Sheet as of December 31, 2007.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include, but are not
limited to, allowances for bad debts and customer credits, useful lives of depreciable assets and capitalizable software costs, long-lived asset impairments, goodwill and purchased intangible asset valuations, accrued liabilities and valuation allowance for deferred tax assets and stock-based compensation expense. Actual results could differ from those estimates.

Cash and Cash Equivalents

For purposes of the Consolidated Balance Sheets and the Consolidated Statements of Cash Flows, the Company considers all highly liquid investments with an original maturity of 90 days or less at the date of purchase to be cash equivalents. Cash and cash equivalents represent amounts held by the Company for use by the Company, and are recorded at cost which approximates fair value.

The Company invests its cash and cash equivalents in instruments that meet the Company’s credit quality standards, as specified in its investment policy guidelines. The Company invests in U.S. Government sponsored or backed obligations, commercial paper, money market funds, and certificates of deposit.

Investments

Autobytel has an investment in one publicly traded company’s equity securities that it categorizes as available-for-sale in accordance with Statement of Financial Accounting Standard (“SFAS”) SFAS 115, “Accounting for Certain Investments in Debt and Equity Securities.” Investments categorized as available-for-sale are measured at fair value with unrealized gains and losses included in accumulated comprehensive income as a separate component of stockholders’ equity. In accordance with SFAS 157, “Fair Value Measurements,” the Company records its investments based on “Level 1” inputs, which are quoted market prices in active markets for identical assets or liabilities. As of December 31, 2008 and 2007, respectively, the balance of the investment was $0.6 million and $0.7 million, with $0.6 million and $0.7 million recorded in accumulated other comprehensive income, respectively. As discussed in Note 6, the Company’s investment is subject to a legal complaint and is therefore classified as a long term asset.

Accounts Receivable

Credit is extended to customers based on an evaluation of the customer’s financial condition, and when credit is extended, collateral is generally not required. Interest is not normally charged on receivables.

Allowances for Bad Debts and Customer Credits

The allowance for bad debts is an estimate of bad debt expense that could result from the inability or refusal of customers to pay for services. Additions to the estimated allowance for bad debts are recorded to general and administrative expenses and are based on factors such as historical write-off percentages, the current business environment and known concerns within the current aging of accounts receivable. Reductions in the estimated allowance for bad debts due to subsequent cash recoveries are recorded as a decrease in general and administrative expenses. As specific bad debts are identified, they are written-off against the previously established estimated allowance for bad debts with no impact on operating expenses.

The allowance for customer credits is an estimate of adjustments for services that do not meet the customer requirements. Additions to the estimated allowance for customer credits are recorded as a reduction of revenue and are based on the Company’s historical experience of: (i) the amount of credits issued; (ii) the length of time after services are rendered that the credits are issued; and (iii) other factors known at the time. Reductions in the estimated allowance for customer credits are recorded as an increase in revenues. As specific customer credits are identified, they are written-off against the previously established estimated allowance for customer credits with no impact on revenues.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Fair Value of Financial Instruments

The Company’s financial instruments, including cash, cash equivalents, accounts receivable and accounts payable are carried at cost, which approximates their fair value due to the relatively short-term maturity of these instruments.

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, investments and accounts receivable. Cash and cash equivalents are primarily maintained with three financial institutions in the United States. Deposits held by banks may exceed the amount of insurance provided for such deposits. Generally these deposits may be redeemed upon demand. Accounts receivable are primarily derived from fees billed to automotive dealers and automotive manufacturers.

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) (“Big Three”). During 2008 approximately 18% of the Company’s total revenues were derived from the Big Three, and approximately 16% or $1.7 million of the total gross accounts receivable relate to the Big Three at December 31, 2008. The Company generally requires no collateral to support its accounts receivables and maintains an allowance for bad debts for potential credit losses.

In 2007, the Company had one automotive manufacturer which accounted for greater than 10% of total revenues. In 2008 and 2006, no dealer, major dealer group, manufacturer, or other customer accounted for greater than 10% of total revenues. The Company had no balances receivable from any single automotive dealer or manufacturer or other customer that accounted for more than 10% of total accounts receivable as of December 31, 2008 and 2007.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is provided using the straight-line method over the estimated useful lives of the respective assets, generally three years. Amortization of leasehold improvements is provided using the straight-line method over the shorter of the remaining lease term or the estimated useful lives of the improvements. Repair and maintenance costs are charged to operating expenses as incurred. Gains or losses resulting from the retirement or sale of property and equipment are recorded as operating income or expenses, respectively.

Operating Leases

The Company leases office space, certain office equipment and a domain name under operating lease agreements which expire on various dates through 2011, with options to renew on expiration of the original lease terms. Reimbursed tenant improvements are considered in determining straight-line rent expense, and are amortized over the shorter of their estimated useful lives or the lease term. The lease term begins on the date of initial possession of the leased property for purposes of recognizing rent expense on a straight-line basis over the term of the lease. Lease renewal periods are considered on a lease-by-lease basis and are generally not included in the initial lease term.

Capitalized Internal Use Software and Website Development Costs

The Company capitalizes costs to develop internal use software in accordance with the provisions of Statement of Position (“SOP”) 98-1, “Accounting for the Costs of Computer Software Developed or Obtained for Internal Use.” The Company capitalizes website development costs under Emerging Issues Task Force (“EITF”) Issue No. 00-2, “Accounting for Website Development Costs” and SOP 98-1. SOP 98-1 and EITF Issue 00-2 require the capitalization of external and internal computer software costs and website development costs, respectively, incurred during the application development stage. The application development stage is characterized by software design and configuration activities, coding, testing and installation. Training and maintenance costs are expensed as incurred while upgrades and enhancements are capitalized if it is probable that such expenditures will result in additional functionality. Capitalized internal use software development costs are amortized using the straight-line method over an estimated useful life of three years. Capitalized website development costs, once placed in service are amortized using the straight-line method over the estimated useful life of the related websites.

Impairment of Long-Lived Assets

The Company periodically reviews its long-lived assets and intangibles assets subject to amortization to determine if there is any impairment of these assets in accordance with SFAS 144, “Accounting for the Impairment or Disposal of Long-Lived Assets.” 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. The Company evaluates these 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. As discussed in Note 3 the Company recorded an impairment loss of $5.5 million on certain of its long-lived assets in 2008.

**Goodwill**

Goodwill represents the excess of the purchase price for business acquisitions over the fair value of identifiable assets and liabilities acquired. The Company evaluates the carrying value of enterprise goodwill for impairment in accordance with SFAS 142, “Goodwill and Other Intangible Assets.” Testing for impairment of goodwill is a two-step process. The first step requires the Company to compare the enterprise’s carrying value to its fair value. If the fair value is less than the carrying value, enterprise goodwill is potentially impaired and the Company then completes the second step to measure the impairment loss, if any. The second step requires the calculation of the implied fair value of goodwill by deducting the fair value of all tangible and intangible net assets from the fair value of the reporting unit. If the implied fair value of goodwill is less than the carrying amount of enterprise goodwill, an impairment loss is recognized equal to the difference. The Company evaluates enterprise goodwill, at a minimum, on an annual basis, in the second quarter of each year or whenever events or changes in circumstances suggest that the carrying amount of goodwill may be impaired.

During 2008, the Company performed its annual impairment test by first comparing the carrying value of the Company to its fair value based on its market capitalization at that date. As the carrying value exceeded the fair value, the second step impairment measurement was performed based on a discounted projection of future cash flows and market methods of determining fair value. As a result of this testing, the entire goodwill balance of $52.1 million was impaired and written-off as an expense in 2008.

**Revenue Recognition**

In accordance with Staff Accounting Bulletin (“SAB”) No. 104, “Revenue Recognition,” the Company recognizes revenues when evidence of an arrangement exists, pricing is fixed and determinable, collection is reasonably assured, and delivery or performance of service has occurred. Lead fees and finance request fees are generally recognized as revenue in the period the service is provided. Advertising revenues are generally recognized in the period the advertisements are displayed on the websites. Fees billed prior to providing services are deferred, as they do not satisfy all of the revenue recognition criteria in SAB No. 104. Deferred revenues are recognized as revenue over the periods services are provided.

Lead fees consist of car buying purchase request fees for new and used cars, and finance request fees. Fees for car buying purchase requests are paid by retail dealers, enterprise dealers and automotive manufacturers or their automotive buying service affiliates who participate in the Company’s online car buying referral networks. Enterprise dealers consist of (i) dealers that are part of major dealer groups with more than 25 dealerships with whom the Company has a single agreement and (ii) dealers that are eligible to receive purchase requests from the Company as part of a single agreement with an automotive manufacturer or its automotive buying service affiliate. Fees paid by customers participating in the Company’s car buying referral networks are comprised of monthly transaction and/or subscription fees for consumer leads, or purchase requests, which are directed to participating dealers. These monthly subscription and transaction fees are recognized in the period service is provided.

Lead fees also include fees paid by retail dealers, finance request intermediaries, and automotive finance companies who participate in the Company’s Car.com finance referral network. Customers participating in the Company’s Car.com finance referral network pay ongoing monthly subscription fees or transaction fees based on the number of finance requests provided to them each month. The fees are recognized in the period service is provided.

Advertising revenues represent fees from automotive manufacturers and other advertisers who target car buyers during the research, consideration and decision making process on the Company’s websites, as well as
through direct marketing offerings. Advertising revenues are recognized in the period the advertisements are displayed on the websites.

The Company also applies the revenue recognition criteria for certain contracts in accordance with EITF 00-21, “Revenue Arrangements with Multiple Deliverables.” In accounting for multiple-element arrangements, one key judgment to be made is the accounting value that is attributable to the different contractual elements. The appropriate allocation of value impacts the amount and timing of revenue recorded in the Consolidated Statement of Operations and Comprehensive Loss. Revenue is allocated to each element based on the accounting determination of the relative fair value of that element to the aggregate fair value of all elements, or alternatively deferred revenue maybe computed based on the fair value of the undelivered elements. The fair values must be reliable, verifiable and objectively determinable. When available, such determination is based principally on the pricing of the same elements with unrelated parties that are not part of a multiple-element arrangement. When sufficient evidence of the fair values of the individual elements does not exist, revenue is not allocated among them until that evidence exists. Instead, the revenue is recognized as earned using revenue recognition principles applicable to the entire arrangement as if it were a single element arrangement. The Company did not have deferred revenue under a multiple-element arrangement at December 31, 2008 or 2007. No revenue was recognized under these arrangements for the year ended December 31, 2008. Revenue recognized under a multiple element arrangement totaled $1.4 million and $0.9 million for the years ended December 31, 2007 and 2006, respectively.

Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, “Accounting for Income Taxes.” Under SFAS No. 109, deferred income tax assets and liabilities are determined based on the differences between the book and tax basis of assets and liabilities and are measured using the currently enacted tax rates and laws. A valuation allowance is recorded against deferred tax assets when it is more likely than not that such deferred tax assets will not be realized.

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 years ended December 31:

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>BASIC AND DILUTED LOSS PER SHARE:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average common shares outstanding</td>
<td>44,329,851</td>
<td>43,413,908</td>
<td>42,389,050</td>
</tr>
<tr>
<td>Weighted average unvested restricted stock outstanding</td>
<td>(242,787)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Basic and dilutive shares</td>
<td>44,087,064</td>
<td>43,413,908</td>
<td>42,389,050</td>
</tr>
</tbody>
</table>

Potentially dilutive securities representing approximately 7.7 million, 7.9 million and 6.9 million shares of common stock for the years ended December 31, 2008, 2007, and 2006, respectively, were excluded from the computation of diluted loss for these periods because their effect would have been anti-dilutive.

F-12
Share-Based Compensation

The Company grants restricted stock and stock option awards (the “Awards”) under several of its share-based compensation Plans (the “Plans”), that are more fully described in Note 8. The Company recognizes share-based compensation based on the Awards’ fair value, net of estimated forfeitures, on a straight line basis. The restricted stock fair value is measured on the grant date based on the quoted market price of Company’s common stock, and the stock option fair value is estimated on the grant date using the Black-Scholes option pricing model based on the underlying common stock closing price as of the date of grant, the expected term, stock price volatility, and risk-free interest rates.

Business Segment

The Company conducts its business within the United States and within one business segment which is defined as providing automotive and marketing services.

Reclassifications

Certain reclassifications have been made to prior years’ consolidated financial statements to conform to the current year presentation.

Advertising Expense

Advertising costs are expensed in the period incurred. Advertising expense in 2008 and 2007 was $7.2 million and $14.8 million, respectively.

Recently Adopted Accounting Pronouncements

SFAS 157: In September 2006, the Financial Accounting Standards Board (“FASB”) issued SFAS 157, “Fair Value Measurements”. SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position (“FSP”) FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 did not have an impact on the Company’s consolidated financial position, results of operations or cash flows and the deferred portion of SFAS 157 that will be adopted by the Company on January 1, 2009 is not expected to have a material impact the Company’s consolidated financial position, results of operations and cash flows.

SFAS 159: In February 2007, the FASB issued SFAS 159, “The Fair Value Option for Financial Assets and Financial Liabilities.” SFAS 159 provides a fair value option that allows companies to measure certain financial instrument, on an instrument by instrument basis, at fair value, and is effective for financial instruments issued for periods beginning after November 15, 2007. Since the Company adopted SFAS 159 as of January 1, 2008 and did not elect the fair value option to measure certain financial instruments, SFAS 159 did not have an impact on its financial statements.

Accounting Pronouncements Not Yet Adopted

SFAS 161: In March 2008, the FASB issued SFAS 161, “Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133.” SFAS 161 provides new disclosure requirements for derivative and hedging activities, and is effective for periods beginning after November 15, 2008. The Company’s adoption of SFAS 161 on January 1, 2009 is not expected to have a material effect on its consolidated financial statements.

SFAS 160: In December 2007, the FASB issued SFAS 160, “Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51.” This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since the Company has no non-controlling interest in its subsidiaries, the adoption of SFAS 161 on January 1, 2009 is not expected to have any material effect on the Company’s consolidated financial statements.

SFAS 141(R): In December 2007, the FASB issued SFAS No. 141R, “Business Combinations.” SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business
combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on the consolidated financial statements will depend on the nature, terms, size of acquisitions, if any, the Company may consummate subsequent to the effective date of January 1, 2009.

3. Selected Balance Sheet Accounts

   Property and Equipment

   Property and equipment consists of the following:

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008 (in thousands)</td>
</tr>
<tr>
<td>Computer software and hardware</td>
<td>$ 9,138</td>
</tr>
<tr>
<td>Furniture and equipment</td>
<td>1,715</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>1,249</td>
</tr>
<tr>
<td>Capitalized internal use software</td>
<td>912</td>
</tr>
<tr>
<td>Development in process</td>
<td></td>
</tr>
<tr>
<td></td>
<td>13,014</td>
</tr>
<tr>
<td>Less—Accumulated depreciation and amortization</td>
<td>(10,593)</td>
</tr>
<tr>
<td></td>
<td>$ 2,421</td>
</tr>
</tbody>
</table>

   During fourth quarter 2008 the Company recorded impairment charges of $4.3 million to reduce the net book value of certain capitalized software related to the MyRide website to its estimated fair value. This impairment was recorded pursuant to impairment indicators including the decision to discontinue the use of the MyRide software platform as well as lower than expected website “traffic” and the related impact on the Company’s projected cash flows. The $4.3 million impairment charge is classified as cost of sales in the Consolidated Results of Operations and Comprehensive Loss.

   The Company also recorded an expense of $1.2 million and $0.3 million in 2008 and 2006, respectively, associated with the write-off of capitalized software projects that are no longer being developed or expected to be placed in service for their intended use. These expense amounts were included in general and administrative and technology support on the 2008 and 2006 Consolidated Statement of Operations and Comprehensive Loss, respectively.

   As of December 31, 2008 and 2007, capitalized internal use software, net of amortization, and development in process were $0.4 million and $6.0 million, respectively.

   Depreciation and amortization expense related to property and equipment was $4.8 million, $3.5 million, and $1.9 million for the years ended December 31, 2008, 2007 and 2006, respectively.

   Accrued Expenses and Other Current Liabilities

   As of December 31, 2008 and 2007, accrued expenses and other current liabilities consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008 (in thousands)</td>
</tr>
<tr>
<td>Compensation and related costs</td>
<td>$2,288</td>
</tr>
<tr>
<td>Accrued severance</td>
<td>2,614</td>
</tr>
<tr>
<td>Professional fees</td>
<td>340</td>
</tr>
<tr>
<td>Other accrued expenses</td>
<td>261</td>
</tr>
<tr>
<td>Amounts due to customers</td>
<td>583</td>
</tr>
<tr>
<td>Outstanding checks</td>
<td>143</td>
</tr>
</tbody>
</table>

F-14
4. Business and Asset Divestitures

On January 31, 2007, the Company completed the sale of certain assets and liabilities of the AIC operations to R.L. Polk & Co. (“Polk”) for $3.0 million. The Company received cash of $2.1 million, net of $0.4 million associated with AIC’s deferred revenues and prepaid expenses at January 31, 2007. The balance of $0.5 million was deposited by Polk in an escrow account that was distributed to the Company in the second quarter of 2007. As part of the transaction, the Company received a license to use data supplied by Polk at no cost for a period of three years and the Company licensed to Polk certain data at no cost for a period of three years and certain software at no cost in perpetuity. The Company recognized a gain on the sale of the AIC operations of $2.8 million during the year ended December 31, 2007, which is classified as discontinued operations in the Consolidate Statements of Operations and Comprehensive Loss.

On June 30, 2007, the Company sold all of the outstanding capital stock of Retention Performance Marketing, Inc. (“RPM”) to OneCommand, Inc. (“OneCommand”), formerly known as Call Command, Inc., pursuant to a Stock Purchase Agreement (“RPM Agreement”) for an aggregate purchase price of $7.6 million, subject to a working capital adjustment. Substantially all the assets and certain liabilities of the RPM business were included in the sale and consisted primarily of accounts receivable, prepaid expenses, certain property and equipment, intangible assets, accounts payable and accrued expenses. The Company received cash of $7.1 million and the balance of $0.5 million, which was deposited by OneCommand in an escrow account that was distributed to the Company in the fourth quarter of 2007 upon determination of the working capital adjustment in accordance with the terms of the RPM Agreement. The Company recognized a gain on the sale of the RPM business of $3.6 million during the year ended December 31, 2007, which is classified as discontinued operations in the Consolidate Statements of Operations and Comprehensive Loss.

On October 25, 2007, the Company sold its 9.41% investment in Autobytel Japan to SBI Holdings Inc. for approximately $4.0 million in cash. In connection with the sale, the Company entered into the Second Amended and Restated License Agreement with Autobytel Japan pursuant to which the Company will provide it a perpetual, royalty-free, non-exclusive, non-transferable license for certain intellectual property. The Company does not have any continuing performance obligations under the license agreement. The Company’s investment in Autobytel Japan at the date of the sale was zero as the investment amount had been previously written down. The $4.0 million in cash was received in November 2007 and was reported as other income in the fourth quarter of 2007.

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; which is classified as discontinued operations in the Consolidated Statements of Operations and Comprehensive Loss 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. Pursuant to the escrow agreement, certain contingencies may apply to full recovery of the escrow amount upon the one year anniversary of the sale. Dominion has notified the escrow holder of a claim against the escrowed amount in connection with Dominion’s claim for indemnification under the AVV business purchase agreement with respect to the Insweb Patent Litigation described under Note 6 to these Notes to Consolidated Financial Statements-Commitments and Contingencies-Litigation.

In conjunction with the dispositions of the Company’s RPM and AVV businesses, the Company entered into Transition Services and Arrangements Agreements (“TSAAs”) whereby the Company agreed to provide certain transition services for the RPM and AVV businesses for a period not to exceed six months and eight months,
respectively. The expected cash flows under the TSAAs do not represent a significant continuation of the direct cash flows of the disposed RPM or AVV businesses. The Company also agreed to indemnify each of the purchasers for pre-closing tax obligations and other pre-closing obligations and liabilities. The term of the indemnification for the pre-closing tax obligations is based on the statute of limitation as set forth by the taxing authority. The term of the indemnification for other obligations and liabilities generally range from 1 year to 3 years, with the indemnification obligation for certain specified liabilities surviving indefinitely. The maximum indemnification obligation is the purchase price of each transaction, subject to certain exceptions which have no indemnification limitation. Since it is not possible to determine whether there will be any indemnification obligations in the future or the amounts thereof, the Company cannot estimate the potential amount of future payments, if any, under these indemnification obligations. Therefore, no liability for these indemnification obligations has been recorded.

The assets and liabilities that are included in the sale of AVV are classified as held for sale at December 31, 2007 and the results of operations for AVV, AIC and RPM are presented as discontinued operations for all periods presented. As discontinued operations, revenues and expenses have been aggregated and stated separately from the respective captions of continuing operations in the Consolidated Statements of Operations and Comprehensive Loss. Expenses include direct costs of the business that will be eliminated from future operations as a result of the sales.

For the years ended December 31, 2008, 2007, and 2006 the results of operations of AVV, AIC and RPM are reported as discontinued operations, net of taxes, as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td><strong>REVENUES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>AVV</td>
<td>AIC</td>
<td>RPM</td>
</tr>
<tr>
<td></td>
<td>$ 568</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td></td>
<td>$10,559</td>
<td>$210</td>
<td>$7,145</td>
</tr>
<tr>
<td></td>
<td>$11,554</td>
<td>$3,087</td>
<td>$14,303</td>
</tr>
<tr>
<td><strong>COSTS AND EXPENSES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>88</td>
<td>10</td>
<td>3,346</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>150</td>
<td>68</td>
<td>3,303</td>
</tr>
<tr>
<td>Technology support</td>
<td>114</td>
<td>193</td>
<td>287</td>
</tr>
<tr>
<td>General and administrative</td>
<td>53</td>
<td>32</td>
<td>96</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL COSTS AND EXPENSES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>317</td>
<td>303</td>
<td>7,032</td>
</tr>
<tr>
<td>Gain on sale</td>
<td>4,204</td>
<td>2,762</td>
<td>3,576</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>62</td>
<td>62</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td><strong>DISCONTINUED OPERATIONS, NET</strong></td>
<td><strong>$4,393</strong></td>
<td><strong>$5,582</strong></td>
</tr>
</tbody>
</table>

5. 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 (the “Settlement Agreement”). The agreement provides that Dealix will 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 annual anniversary dates of the initial payment. On March 14, 2008, the Company received the first of three $2.7 million settlement payments pursuant to the agreement. The Company recorded the payments as patent litigation settlement in the period payment was received, as a reduction to costs and operating expenses. The remaining payments are guaranteed by WP Equity Partners, Inc., a Warburg Pincus affiliate. The Company has been unable to assess with reasonable assurance the collectability of the remaining payments under the Settlement Agreement as the Company does not have financial information to support the credit worthiness of the debtor or guarantor. The Company does not have reasonable assurance that it will receive

F-16
any remaining payments on their respective due dates or at all, and therefore have not recorded any amounts receivable related to the Settlement Agreement as of December 31, 2008 or 2007.

6. Commitments and Contingencies

Operating Leases

The Company leases its facilities, certain office equipment and a domain name under operating leases which expire on various dates through 2011. On February 6, 2009 the Company amended its operating lease for its corporate offices in Irvine California (the “Lease”). Effective March 31, 2009, the Lease (i) extends the term from October 1, 2010 to July 31, 2011, with two options to extend the Lease for a period of one year each, (ii) reduces the rentable square footage by approximately 55% (from 60,000 square feet to 26,000 square feet), and (iii) reduces the monthly rent by approximately 60%. The Company’s future minimum lease payments on leases with non-cancelable terms in excess of one year were as follows (in thousands):

<table>
<thead>
<tr>
<th>Years Ending December 31</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$ 900</td>
</tr>
<tr>
<td>2010</td>
<td>658</td>
</tr>
<tr>
<td>2011</td>
<td>320</td>
</tr>
<tr>
<td>Thereafter</td>
<td>—</td>
</tr>
</tbody>
</table>

Rent expense included in costs and expenses from continuing operations was $1.4 million, $1.6 million and $1.6 million for the years ended December 31, 2008, 2007 and 2006, respectively.

Guarantees

The Company guarantees an operating lease commitment for one of its wholly owned subsidiaries. The maximum guarantee amount is approximately $0.2 million which represents the remaining commitment, through January 2012, on such operating lease arrangements as of December 31, 2008.

Employment Agreements

As of December 31, 2008, the Company had 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 (the “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 pre-determined 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. On October 9, 2002, the District Court dismissed the Autobytel Individual Defendants from the case without prejudice. On December 5, 2006, the Second Circuit vacated a decision by the District Court granting class certification in six of the coordinated cases, which are intended to serve as test, or “focus” cases. The plaintiffs selected these six cases, which do not include the Company. On April 6, 2007, the Second Circuit denied the petition for rehearing filed by the plaintiffs, but noted that the plaintiffs could ask the District Court to certify more narrow classes than those that were rejected. On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. The six focus case issuers and the underwriters named as defendants in the focus cases filed motions to dismiss the amended complaints against them on November 14, 2007. On September 27, 2007, the plaintiffs moved to certify a class in the six focus cases. On March 26, 2008, the District Court dismissed the Securities Act claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all other claims, the motions to dismiss were denied. On October 10, 2008, at the request of the plaintiffs, the plaintiff’s motion for class certification was withdrawn, without prejudice. The parties in the approximately 300 coordinated class actions,
including Autobytel, the underwriter defendants in the Autobytel class action, and the plaintiffs in the Autobytel class action, have reached an agreement in principle under which the insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autobytel. The settlement is subject to approval by the parties, termination by the parties under certain circumstances, and Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement is not concluded or approved 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 (the "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 pre-determined 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. On October 9, 2002, the District Court dismissed the Autoweb Individual Defendants from the case without prejudice. On December 5, 2006, the Second Circuit vacated a decision by the District Court granting class certification in six of the coordinated cases, which are intended to serve as test, or “focus” cases. The plaintiffs selected these six cases, which do not include Autoweb. On April 6, 2007, the Second Circuit denied a petition for rehearing filed by the plaintiffs, but noted that the plaintiffs could ask the District Court to certify more narrow classes than those that were rejected. On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. The amended complaints include a number of changes, such as changes to the definition of the purported class of investors and the elimination of the individual defendants as defendants. The six focus case issuers and the underwriters named as defendants in the focus cases filed motions to dismiss the amended complaints against them on November 14, 2007. On September 27, 2007, the plaintiffs moved to certify a class in the six focus cases. On March 26, 2008, the District Court dismissed the Securities Act claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all other claims, the motions to dismiss were denied. On October 10, 2008, at the request of the plaintiffs, the plaintiff’s motion for class certification was withdrawn, without prejudice. The parties in the approximately 300 coordinated class actions, including Autoweb, the underwriter defendants in the Autoweb class action, and the plaintiffs in the Autoweb class action, have reached an agreement in principle under which the insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autoweb. The settlement is subject to approval by the parties, termination by the parties under certain circumstances, and Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement is not concluded or approved 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. The Company reviewed the above class action matters and does not believe that it is probable that a loss contingency has occurred; therefore, the Company has not recorded a liability against these claims in the accompanying financial statements.

On November 30, 2007, the Company filed a lawsuit in the United States District Court for the Eastern District of Texas against Insweb Corporation, Leadpoint, Inc., Internet Brands, Inc. and Auto Internet Marketing, Inc. ("AIM"). In the lawsuit, the Company asserts infringement of the Company’s U.S. Patent No. 6,282,517, entitled “Real Time Communication of Purchase Requests,” ("Autobytel ’517 Patent") against such parties, and seeks damages and a permanent injunction. The Company cannot currently predict the outcome of this matter, which, depending on the outcome, may have a material impact on its results of operations, financial condition or cash flows.

On March 11, 2008, Insweb Corporation filed a lawsuit in the United States District Court for the Southern District of California against the Company, one of the Company’s subsidiaries and Dominion Enterprises, the purchaser of the AVV business (“Insweb Patent Litigation”). In the lawsuit, Insweb asserts infringement of Insweb’s U.S. Patent No. 6,898,597, entitled “Event Log” ("Insweb ’597 Patent") by marketing and
selling the WebControl product of the AVV business and is seeking damages and a permanent injunction. On July 3, 2008, the complaint in the Insweb Patent Litigation was amended to add Leadpoint, Inc., Internet Brands, Inc. and Auto Internet Marketing, Inc. as additional plaintiffs and co-owners of the Insweb ‘597 Patent and to add RPM and OneCommand, the purchaser of the RPM business, as additional defendants. In addition to the asserted infringement with respect to the WebControl product, the amended complaint asserts infringement of the Insweb ‘597 Patent by marketing and selling the RPM technology. The Company is vigorously defending the lawsuit. Dominion Enterprises has asserted an indemnity claim under the AVV business purchase agreement and in connection therewith has notified the escrow holder of a claim against the $1.9 million amount escrowed under the AVV business purchase agreement with respect to such indemnification claim. The Company is obligated to indemnify Dominion for this claim subject to and in accordance with the terms of the purchase agreement. RPM and OneCommand have asserted an indemnity claim under the purchase agreement relating to the sale of the RPM business. The Company is obligated to indemnify RPM and OneCommand for this claim subject to and in accordance with the terms of the purchase agreement. The Company cannot currently predict the outcome of this matter, which, depending on the outcome, may have a material impact on its results of operations, financial condition or cash flows.

On November 27, 2008, the Company and AIM entered into a Settlement Agreement that settled all claims by Autobytel against AIM in the Autobytel Patent Litigation and all claims by AIM against Autobytel in the Insweb Patent Litigation. The Settlement Agreement provides for the payment of $15,000 to Autobytel and future per lead payments based on the number of leads delivered by AIM to its customers. As a condition precedent to this Agreement, AIM divested itself of any and all ownership interest in the Insweb ‘597 Patent and withdrew as a party plaintiff in the Insweb Patent Litigation.

On March 13, 2008, Edmunds Holding Company et. al filed a lawsuit in the United States District Court for the District of Delaware against the Company. In the lawsuit, Edmunds is seeking a declaration that its business activities, some of which include generating automotive leads, do not infringe the Autobytel ‘517 Patent and that such patent is invalid. On February 20, 2009, this declaratory relief action was dismissed by the court.

On May 14, 2008, Internet Brands, Inc. filed a Complaint in Interpleader and a Demand for Arbitration/Mediation asserting claims for breach of contract, misrepresentation, fraud, breach of implied covenants of good faith and fair dealing, breach of fiduciary duties and declaratory relief, and other causes of action relating to a strategic co-marketing agreement (“Co-Marketing Agreement”) between Internet Brands and the Company’s subsidiary, Autoweb, entered into prior to the Company’s acquisition of Autoweb in August 2001. The Company has been informed that prior to the filing of its claims, Internet Brands instructed its share transfer agent to deliver to Internet Brands a certificate representing the shares of Internet Brands’ common stock issued to Autoweb pursuant to the Co-Marketing Agreement (“Internet Brands Stock”) that were held by the share transfer agent in connection with Internet Brands’ initial public offering and which remain in the name of Autoweb as stockholder of record, as confirmed by the share transfer agent. Internet Brands alleges that pursuant to the Co-Marketing Agreement, the Company granted to Internet Brands an implied license to employ the technology which is the subject of the Autobytel ‘517 Patent and that the Company’s filing of the complaint against Internet Brands in the Autobytel Patent Litigation repudiated the Co-Marketing Agreement. Internet Brands seeks unspecified compensatory and punitive damages, a declaration that Internet Brands was granted an implied license to employ the technology which is the subject of the Autobytel ‘517 Patent and that the Company’s Co-Marketing Agreement was repudiated. Internet Brands also seeks a declaration that Internet Brands is not obligated to return the Internet Brands Stock to Autoweb. The Company is vigorously defending the lawsuit and has filed a cross-complaint against Internet Brands asserting causes of action for, among other things, conversion of the Internet Brands Stock and seeking damages and return of the Internet Brands Stock. The Company cannot currently predict the outcome of this matter, which, depending on the outcome, may have a material impact on its results of operations, financial condition or cash flows.

From time to time, the Company is 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.

F-19
7. Retirement Savings Plan

The Company has a retirement savings plan which qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code (IRC or Code) (the 401(k) Plan.) The 401(k) Plan covers all employees of the Company who are over 21 years of age and is effective on the first day of the month following date of hire. Under the 401(k) Plan, participating employees are allowed to defer up to 50% of their pretax salaries not to exceed the maximum IRC deferral amount. The Company contributions to the 401(k) Plan are discretionary. During 2008, 2007 and 2006, the Company contributed $0.4 million, $0.5 million, and $0.6 million, respectively.

8. Stock-Based Incentive Plans

The Company has established several Plans that provide for stock-based awards (the “Awards”) primarily in the form of stock options and restricted stock awards (RSA’s). Certain of these Plans provide for awards to employees, the Company’s Board of Directors, and independent consultants. The Awards were granted under the 1996 Stock Incentive Plan, the 1998 Stock Option Plan, the 1999 Stock Option Plan, the 1999 Employee and Acquisition related Stock Option Plan, the 2000 Stock Option Plan, the Amended and Restated 2001 Restricted Stock and Option Plan, the 2004 Restricted Stock and Option Plan, and the 2006 Inducement Stock Option Plan. An aggregate of 2.7 million shares of Company common stock are reserved for future issuance under the Plans at December 31, 2008.

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

<table>
<thead>
<tr>
<th></th>
<th>Years Ended December 31</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008 (in thousands)</td>
<td>2007</td>
<td>2006</td>
</tr>
<tr>
<td>Share-based compensation expense:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>$ 177</td>
<td>$ 157</td>
<td>$ 215</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>756</td>
<td>970</td>
<td>1,116</td>
</tr>
<tr>
<td>Technology support</td>
<td>601</td>
<td>785</td>
<td>1,018</td>
</tr>
<tr>
<td>General and administrative</td>
<td>1,566</td>
<td>2,669</td>
<td>2,762</td>
</tr>
<tr>
<td>Share-based compensation expense included in continuing operations</td>
<td>3,100</td>
<td>4,581</td>
<td>5,111</td>
</tr>
<tr>
<td>Share-based compensation expense included in discontinued operations</td>
<td>8</td>
<td>172</td>
<td>286</td>
</tr>
<tr>
<td>Total share-based compensation expense</td>
<td>3,108</td>
<td>4,753</td>
<td>5,397</td>
</tr>
<tr>
<td>Amount capitalized to internal use software</td>
<td>—</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Total share-based compensation costs</td>
<td>$3,108</td>
<td>$4,763</td>
<td>$5,402</td>
</tr>
</tbody>
</table>

Certain Awards accelerated their vesting in accordance with their respective original award agreements. The total expense related to these accelerated vested Awards was approximately $0.7 million for the year ended December 31, 2008.

As of December 31, 2008, there was approximately $2 million of unrecognized compensation expense related to unvested stock-based Award grants. This expense is expected to be recognized over a weighted average period of 2.2 years.

Stock Options

The fair value of stock options is estimated on the grant date using the Black-Scholes option pricing model based on the underlying common stock closing price as of the date of grant, the expected term, stock price volatility, and risk-free interest rates. The expected risk-free interest rate is based on United States treasury yield for a term consistent with the expected life of the stock option in effect at the time of grant. Expected volatility is based on the Company’s historical experience for a period equal to the expected life. The Company has used historical volatility because it has a limited number of options traded on its common stock to support the use of an implied volatility or a combination of both historical and implied volatility. Expected life is calculated using a lattice expected term model, which utilizes historical data to calculate future behavior. A dividend yield is not considered in the option-pricing
formula since the Company has not paid dividends in the past and has no current plans to do so in the future. The estimated forfeiture rate used is based on historical experience and is adjusted based on actual experience.

The Company grants its options at exercise prices that are not less than the fair market value of the Company’s common stock on the date of grant. Stock options generally have a ten year maximum contractual term and generally vest one-third on the first anniversary of the grant date and ratably over twenty-four months, thereafter. The vesting of certain stock options are accelerated under certain conditions, including upon a change in control of the Company or involuntary termination of employment.

Awards granted under the Company’s stock option plans were estimated to have a weighted average grant date fair value per share of $0.62, $1.97, and $2.26, for the years ended December 31, 2008, 2007 and 2006, respectively, based on the Black-Scholes option-pricing model on the date of grant using the following weighted average assumptions:

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected volatility</td>
<td>62%</td>
<td>63%</td>
<td>79%</td>
</tr>
<tr>
<td>Expected risk-free interest rate</td>
<td>2.9%</td>
<td>4.6%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Expected life (years)</td>
<td>4.1</td>
<td>4.4</td>
<td>5.0</td>
</tr>
</tbody>
</table>

A summary of the Company’s outstanding stock options as of December 31, 2008, and changes during the year then ended is presented below:

<table>
<thead>
<tr>
<th></th>
<th>Number of Options</th>
<th>Weighted Average Exercise Price per Share</th>
<th>Weighted Average Remaining Contractual Term (in years)</th>
<th>Aggregate Intrinsic Value (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at December 31, 2007</td>
<td>8,986,636</td>
<td>$4.82</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>2,099,167</td>
<td>1.55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(320,000)</td>
<td>1.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(3,895,925)</td>
<td>4.92</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outstanding at December 31, 2008</td>
<td>6,869,878</td>
<td>$3.88</td>
<td>4.15</td>
<td>$—</td>
</tr>
<tr>
<td>Vested and expected to vest at December 31, 2008</td>
<td>6,314,051</td>
<td>$4.06</td>
<td>3.94</td>
<td>$—</td>
</tr>
<tr>
<td>Exercisable at December 31, 2008</td>
<td>4,599,263</td>
<td>$4.97</td>
<td>2.97</td>
<td>$—</td>
</tr>
</tbody>
</table>

In 2007, the Company provided certain executives with 216,667 options whose vesting was contingent upon meeting certain performance criteria (“Performance Options”). In March 2008, the performance criteria were met and the 216,667 Performance Options vested. In 2008, 216,667 Performance Options were provided to certain executives, with a performance period that concludes in March 2009. Of the 216,667 Performance Options provided in 2008, 200,000 were forfeited due to termination. Compensation cost recorded during 2008 was less than $0.1 million and approximately $0.3 million during 2007.

The total intrinsic value of options exercised during 2008, 2007 and 2006, was $43,000, $1.6 million, and $0.4 million, respectively.

Restricted Stock (“RSA’s”)

During 2008, the Company granted an aggregate of 1,020,000 RSA’s that are subject to forfeiture. The forfeiture restrictions lapse as to one-third of the restricted stock awards on the first anniversary of the grant date and ratably over twenty-four months thereafter. The lapsing of the forfeiture restrictions is accelerated under certain conditions, including upon a change of control of the Company or involuntary termination. Compensation expense for restricted stock awards is measured on the grant date using the quoted market price of the Company’s common stock on the grant date.

A summary of the changes in the Company’s RSA’s during the year ended December 31, 2008 is presented below. The 2008 vested awards were related to awards whose vesting was accelerated in accordance with the original award agreements:
Employee Stock Purchase Plan

The Company’s Employee Stock Purchase Plan (“ESPP”) was adopted in 1996 amended in 2003 and 2007, and terminates in 2017. The ESPP permits eligible employees to purchase shares of the Company’s common stock at 85% of the lower of the fair market value of the common stock on the first or last day of each six month purchase period. The ESPP authorized the purchase of up to 650,000 shares of common stock under the ESPP. The ESPP was suspended by the Company’s Board of Directors during 2008.

Preferred Shares Purchase Rights Plan

In July 2004, the Board of Directors approved the adoption of a stockholder rights plan under which all stockholders of record as of August 10, 2004 received rights to purchase shares of Series A Junior Participating Preferred Stock. The rights were distributed as a non-taxable dividend and will expire July 30, 2014.

The rights will be exercisable only if a person or group acquires 15% or more of the common stock of the Company or announces a tender offer for 15% or more of the common stock. If a person or group acquires 15% or more of the common stock, all rightholders, except the acquirer, will be entitled to acquire at the then exercise price of a right that number of shares of the Company’s common stock which at the time will have a market value of two times the exercise price of the right. Under certain circumstances, all rightholders, other than the acquirer, will be entitled to receive at the then exercise price of a right that number of shares of common stock of the acquiring company which at the time will have a market value of two times the exercise price of the right. The initial exercise price of a right is $65.00.

The Board of Directors may terminate the rights plan at any time or redeem the rights prior to the time a person or group acquires more than 15% of the Company’s common stock.

In January 2009, the stockholder rights plan was amended to allow Coghill Capital Management LLC and certain of its affiliates (collectively “Coghill”) to hold up to 8,118,410 shares without becoming an acquiring person under the stockholders rights, subject to various conditions set forth in the amendment, including Coghill’s execution of and compliance with a standstill agreement.

9. Accrued Liability Related to Work Force Reduction

The Company’s Board of Directors, at the recommendation of management, approved a reduction in the number of its employee workforce by approximately 116 employees (the “Reductions”) during 2008. The Reductions reinforced management’s commitment to improve cash flow and reduce further losses. The Company also terminated the employment of its former Chief Executive Officer in 2008. As a result of the Reductions and termination of the former Chief Executive Officer, the Company recorded a $6.9 million charge, consisting of severance and other related termination expenses, during the year ended December 31, 2008 as follows:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2008 (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenues</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
</tr>
<tr>
<td>Technology support</td>
</tr>
<tr>
<td>General and administrative</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

The Company paid approximately $3.6 million of the severance and other related termination costs during the year ended December 31, 2008. As of December 31, 2008 the remaining accrued liability related to the Reductions was approximately $2.6 million. The Company expects a majority of the accrued liability to be paid in the first quarter of 2009. Also, see Note 13, Subsequent Events, regarding the termination of the employment of the Company’s former Chief Financial Officer.

Pursuant to the former Chief Executive Officer’s employment agreement, he received a severance payment of $1.7 million in December 2008, and is entitled to the continuation of certain insurance benefits for a period of 24 months following his termination.

10. Income Taxes

The benefit for income taxes from continuing operations consists of the following for the years ended December 31:

<table>
<thead>
<tr>
<th>2008 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
</tr>
<tr>
<td>State</td>
</tr>
</tbody>
</table>

Pursuant to the former Chief Executive Officer’s employment agreement, he received a severance payment of $1.7 million in December 2008, and is entitled to the continuation of certain insurance benefits for a period of 24 months following his termination.
<table>
<thead>
<tr>
<th>Deferred:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total income tax benefit</strong></td>
<td>$—</td>
<td>$—</td>
</tr>
</tbody>
</table>

F-22
The reconciliation of the U.S. federal statutory rate to the effective income tax rate for the years ended December 31, 2008, 2007 and 2006, is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2007</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax provision at U.S. federal statutory rates</td>
<td>(35.0)%</td>
<td>(35.0)%</td>
<td>(35.0)%</td>
</tr>
<tr>
<td>State taxes</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Non-deductible permanent items</td>
<td>0.1</td>
<td>0.4</td>
<td>0.3</td>
</tr>
<tr>
<td>Incentive stock options</td>
<td>0.1</td>
<td>2.4</td>
<td>1.1</td>
</tr>
<tr>
<td>Goodwill</td>
<td>28.2</td>
<td>6.0</td>
<td>—</td>
</tr>
<tr>
<td>Change in federal valuation allowance</td>
<td>6.5</td>
<td>26.1</td>
<td>33.2</td>
</tr>
</tbody>
</table>

F-23
Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred taxes as of December 31, 2008 and 2007 are as follows:

<table>
<thead>
<tr>
<th></th>
<th>2008 (in thousands)</th>
<th>2007 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred tax assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowance for doubtful accounts</td>
<td>$524</td>
<td>$255</td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>273</td>
<td>401</td>
</tr>
<tr>
<td>Net operating loss carry-forwards</td>
<td>34,315</td>
<td>33,319</td>
</tr>
<tr>
<td>Fixed assets</td>
<td>732</td>
<td>830</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>4,489</td>
<td>2,864</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td>4,327</td>
<td>3,188</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>774</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>88</td>
<td>115</td>
</tr>
<tr>
<td><strong>Total gross deferred tax assets</strong></td>
<td>45,522</td>
<td>40,972</td>
</tr>
<tr>
<td><strong>Deferred tax liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intangible assets</td>
<td>(17)</td>
<td>(74)</td>
</tr>
<tr>
<td>Other</td>
<td>(232)</td>
<td>(281)</td>
</tr>
<tr>
<td>Federal benefit of state taxes</td>
<td>(1,633)</td>
<td>(1,434)</td>
</tr>
<tr>
<td><strong>Total gross deferred tax liabilities</strong></td>
<td>(1,882)</td>
<td>(1,789)</td>
</tr>
<tr>
<td><strong>Valuation allowance</strong></td>
<td>(43,640)</td>
<td>(39,183)</td>
</tr>
<tr>
<td><strong>Net deferred income taxes</strong></td>
<td>$—</td>
<td>$—</td>
</tr>
</tbody>
</table>

At December 31, 2008, the Company had recorded a valuation allowance of $43.6 million on its net deferred tax assets. Based on the weight of available evidence, the Company believes that it is more likely than not that these deferred tax assets will not be realized.

At December 31, 2008, and 2007, the Company had federal and state net operating loss carry-forwards of approximately $91.0 million and $52.2 million, respectively. The federal net operating loss carry-forwards expire through 2028 as follows (in millions):

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$30.3</td>
</tr>
<tr>
<td>2022</td>
<td>2.7</td>
</tr>
<tr>
<td>2023</td>
<td>—</td>
</tr>
<tr>
<td>2024</td>
<td>4.1</td>
</tr>
<tr>
<td>2025</td>
<td>7.2</td>
</tr>
<tr>
<td>2026</td>
<td>25.9</td>
</tr>
<tr>
<td>2027</td>
<td>15.5</td>
</tr>
<tr>
<td>2028</td>
<td>5.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$91.0</td>
</tr>
</tbody>
</table>

The state net operating loss carry-forwards expire through 2029 as follows (in millions):

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$17.4</td>
</tr>
<tr>
<td>2016</td>
<td>3.4</td>
</tr>
<tr>
<td>2017</td>
<td>5.4</td>
</tr>
<tr>
<td>2018</td>
<td>20.8</td>
</tr>
<tr>
<td>2019</td>
<td>3.2</td>
</tr>
<tr>
<td>2029</td>
<td>2.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$52.2</td>
</tr>
</tbody>
</table>
A portion of these net operating losses are subject to an annual limitation of approximately $0.5 million per year. The federal and state net operating losses begin to expire in 2021 and 2015, respectively. Approximately $10.8 million and $5.0 million, respectively, of the federal and state net operating loss carry-forwards were incurred by subsidiaries prior to the date of the Company’s acquisition of such subsidiaries. The Company established a valuation allowance of $4.1 million at the date of acquisitions related to these subsidiaries. The tax benefits associated with the realization of such net operating losses will be credited to the provision for income taxes. In addition, the federal and state net operating losses of approximately $13.5 million and $8.5 million, respectively, relate to stock option deductions. Therefore, to the extent that the valuation allowance is reduced in the future and such options are realized in accordance with SFAS No. 123(R), approximately $4.7 million and $0.5 million, respectively, will be credited to stockholder’s equity rather than to income tax benefit.

At December 31, 2008, deferred tax assets exclude approximately $0.6 million and $0.1 million of tax-effected federal and state net operating losses pertaining to tax deductions from stock-based compensation. Upon future realization of these benefits, the Company expects to increase additional paid-in capital and reduce income taxes payable. For purposes of SFAS No. 123(R), the benefit of excess stock option deductions is not recorded until such time that the deductions reduce income taxes payable. For purposes of determining when the stock options reduce income taxes payable, the Company has adopted the “with and without” approach under SFAS No. 123(R) whereby the Company considers net operating losses arising from continuing operations prior to net operating losses attributable to excess stock option deductions.

At December 31, 2007, the Company had federal and state tax credit carry-forwards of $0.3 million and $0.2 million, respectively, which begin to expire in 2021.

Upon adoption of FIN 48, the Company analyzed its filing positions for all open tax years in all U.S. federal and state jurisdictions where the Company is required to file. At the adoption date of January 1, 2007, the Company had $0.5 million of unrecognized tax benefits. Of the total unrecognized tax benefits at the adoption date, the entire amount of $0.5 million was recorded as a reduction to deferred tax assets, which caused a corresponding reduction in the Company’s valuation allowance of $0.5 million. To the extent such portion of unrecognized tax benefits is recognized at a time such valuation allowance no longer exists, the recognition would impact the Company’s effective tax rate. The following table shows the reconciliation of the total amounts of unrecognized tax benefits for 2007 (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrecognized tax benefit – opening balance</td>
<td>$500</td>
</tr>
<tr>
<td>Gross increases or decreases – current period</td>
<td>—</td>
</tr>
<tr>
<td>Settlements</td>
<td>—</td>
</tr>
<tr>
<td>Lapse of statute of limitations</td>
<td>—</td>
</tr>
<tr>
<td>Unrecognized tax benefit</td>
<td>$500</td>
</tr>
</tbody>
</table>

The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, the Company is no longer subject to U.S. federal and state tax examinations for years prior to 2004. The Company does not believe there will be any material changes in its unrecognized tax positions over the next 12 months. Therefore, no reserves for uncertain income tax positions have been recorded pursuant to FIN 48. In addition, the Company did not record a cumulative effect adjustment related to the adoption of FIN 48 and the adoption of FIN 48 did not have a material effect on the Company’s consolidated financial position or results of operations.

The Company’s policy is to recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of the date of adoption and December 31, 2008, the Company did not have any accrued interest or penalties associated with any unrecognized tax benefits, nor were any interest expense recognized in the year ended December 31, 2008.
11. Related Party Transactions

The Spouse of the Company’s Executive Vice President, and Chief Operating Officer, was employed by the Company from February 2005 to July 2008. Her base annual salary for the most recent fiscal year was $152,000 and she was eligible for a bonus of up to 20% of her base salary. Her salary and bonus payments for 2008 and 2007 were $119,000 and $163,500, respectively.

During the fourth quarter of 2007, the Company entered into a transaction with The Search Agency, a provider of search engine marketing and search engine optimization services. Jeffrey M. Stibel, a director of the Company, is an equity owner of The Search Agency. The Company incurred costs of approximately $500,000 and $100,000 for services provided by The Search Agency for the year ended December 31, 2008 and 2007, respectively. The accounts payable related to the Search Agency in the Company’s Consolidated Balance Sheet as of December 31, 2008 and 2007 were $23,000 and approximately $100,000, respectively. All such services were provided in the ordinary course of business at prices and on terms and conditions that the Company believes are the same as those that would result from arm’s-length negotiations between unrelated parties.

12. Quarterly Financial Data (Unaudited)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$14,206</td>
<td>$17,270</td>
<td>$18,986</td>
<td>$20,697</td>
<td>$18,886</td>
<td>$21,911</td>
<td>$21,642</td>
<td>$21,946</td>
</tr>
<tr>
<td>Gross Profit (loss)</td>
<td>(32)</td>
<td>6,163</td>
<td>6,772</td>
<td>6,872</td>
<td>5,809</td>
<td>6,977</td>
<td>8,880</td>
<td>10,271</td>
</tr>
<tr>
<td>(Loss) income from continuing operations</td>
<td>(15,058)</td>
<td>(5,811)</td>
<td>(57,354)</td>
<td>(6,086)</td>
<td>(6,873)</td>
<td>(5,809)</td>
<td>(6,588)</td>
<td>(2,035)</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$(15,054)</td>
<td>$(5,627)</td>
<td>$(57,285)</td>
<td>$(1,950)</td>
<td>$(4,382)</td>
<td>$(6,588)</td>
<td>$(2,035)</td>
<td>$7,650</td>
</tr>
<tr>
<td>Basic and diluted earnings/(loss) per share from continuing operations</td>
<td>$(0.34)</td>
<td>$(0.13)</td>
<td>$(1.30)</td>
<td>$(0.14)</td>
<td>$(0.14)</td>
<td>$(0.18)</td>
<td>$(0.16)</td>
<td>$0.09</td>
</tr>
</tbody>
</table>

(a) Loss from continuing operations and net loss includes non-cash impairment charges of $5.5 million, and gross loss includes a non-cash impairment charge of $4.3 million.
(b) Loss from continuing operations and net loss includes a non-cash goodwill impairment charge of $52.1 million.
(c) Net loss includes a $4.2 million gain related to the sale of certain assets and liabilities of AVV, Inc., a data extraction and customer relationship management software business and a $2.7 million litigation settlement payment.
(d) Net loss includes a $3.6 million gain on the sale of RPM.
(e) Net income includes a $2.8 million gain on the sale of AIC and a $12 million litigation settlement payment.

13. Subsequent Event

On January 30, 2009, the Company elected to terminate the employment of its former Chief Financial Officer effective February 28, 2009. Pursuant to the former Chief Financial Officer’s employment agreement he received a severance payment of $480,000, and is entitled to the continuation of certain insurance benefits for a period of 12 months following his termination. In addition, if a change in control of the Company (as defined in the foregoing employment agreement) occurs at any time during the six months following his termination date, the former Chief Financial Officer will be entitled to an additional payment of $480,000.
# SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

Autobytel Inc.

<table>
<thead>
<tr>
<th></th>
<th>Years Ended December 31,</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2008</td>
<td>2007</td>
<td>2006</td>
</tr>
<tr>
<td>Allowance for bad debts:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beginning balance</td>
<td>$329</td>
<td>$529</td>
<td>$691</td>
<td></td>
</tr>
<tr>
<td>Additions</td>
<td>1,443</td>
<td>300</td>
<td>391</td>
<td></td>
</tr>
<tr>
<td>Write-offs</td>
<td>(806)</td>
<td>(500)</td>
<td>(553)</td>
<td></td>
</tr>
<tr>
<td>Ending balance</td>
<td>$966</td>
<td>$329</td>
<td>$529</td>
<td></td>
</tr>
<tr>
<td>Allowance for customer credits:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beginning balance</td>
<td>$205</td>
<td>$269</td>
<td>$433</td>
<td></td>
</tr>
<tr>
<td>Additions</td>
<td>1,295</td>
<td>1,202</td>
<td>1,645</td>
<td></td>
</tr>
<tr>
<td>Write-offs</td>
<td>(1,189)</td>
<td>(1,266)</td>
<td>(1,809)</td>
<td></td>
</tr>
<tr>
<td>Ending balance</td>
<td>$311</td>
<td>$205</td>
<td>$269</td>
<td></td>
</tr>
<tr>
<td>Tax valuation allowance:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beginning balance</td>
<td>$39,183</td>
<td>$39,180</td>
<td>$28,521</td>
<td></td>
</tr>
<tr>
<td>(Credited) Charged to tax expense</td>
<td>4,802</td>
<td>416</td>
<td>12,607</td>
<td></td>
</tr>
<tr>
<td>Charged (credited) to other</td>
<td>(345)</td>
<td>(413)</td>
<td>(1,948)</td>
<td></td>
</tr>
<tr>
<td>Ending balance</td>
<td>$43,640</td>
<td>$39,183</td>
<td>$39,180</td>
<td></td>
</tr>
</tbody>
</table>
## EXHIBIT INDEX

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Asset Purchase Agreement, dated as of January 23, 2008, between the Company, AVV, Inc. and Dominion Enterprises is incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC on January 29, 2008</td>
</tr>
<tr>
<td>4.1</td>
<td>Form of Common Stock Certificate of Autobytel is incorporated herein by reference to Exhibit 4.1 of the September 2001 10-Q</td>
</tr>
<tr>
<td>4.3</td>
<td>Form of Rights Certificate (included as Exhibit to Exhibit 4.3) incorporated herein by reference to Exhibit 99.3 of the August 2004 8-K</td>
</tr>
<tr>
<td>10.1</td>
<td>Form of Indemnification Agreement between Autobytel and its directors and officers is incorporated herein by reference to Exhibit 10.1 of Amendment No. 2 (filed on March 5, 1999) to Autobytel’s Registration Statement on Form S-1 (File No. 333-70621) originally filed with the Securities and Exchange Commission (“SEC”) on January 15, 1999 and declared effective (as amended) on March 25, 1999 (“S-1 Registration Statement”)</td>
</tr>
<tr>
<td>10.2**</td>
<td>Form of Outside Director Stock Option Agreement under the 2004 Restricted Stock and Option Plan is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on September 14, 2005 (the “September 2005 8-K”)</td>
</tr>
<tr>
<td>10.3**</td>
<td>Form of Letter Agreement (amending certain stock option agreements with Outside Directors) is incorporated herein by reference to Exhibit 10.2 of the September 2005 8-K</td>
</tr>
<tr>
<td>10.4**</td>
<td>1996 Employee Stock Purchase Plan is incorporated herein by reference to Exhibit 10.7 of Amendment No. 1 to the S-1 Registration Statement filed with the SEC on February 9, 1999 (the “S-1 Amendment”)</td>
</tr>
<tr>
<td>10.5**</td>
<td>autobytel.com inc. 1998 Stock Option Plan is incorporated herein by reference to Exhibit 10.8 of the S-1 Amendment</td>
</tr>
<tr>
<td>Number</td>
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</tr>
<tr>
<td>10.6**</td>
<td>autobytel.com inc. 1999 Stock Option Plan is incorporated herein by reference to Exhibit 10.30 of the S-1 Amendment</td>
</tr>
<tr>
<td>10.7**</td>
<td>autobytel.com inc. 1999 Employee and Acquisition Related Stock Option Plan is incorporated herein by reference to Exhibit 10.1 of the Registration Statement filed on Form S-8 (File No. 333-90045) filed with the SEC on November 1, 1999</td>
</tr>
<tr>
<td>10.8**</td>
<td>Amendment No. 1 to the autobytel.com inc. 1998 Stock Option Plan dated September 22, 1999 is incorporated herein by reference to Exhibit 10.2 of Form 10-Q for the Quarter Ended September 30, 1999 filed with the SEC on November 12, 1999</td>
</tr>
<tr>
<td>10.9**</td>
<td>Amendment No. 1 to the autobytel.com inc. 1999 Stock Option Plan, dated September 22, 1999 is incorporated herein by reference to Exhibit 10.1 of Form 10-Q for the Quarter Ended September 30, 1999 filed with the SEC on November 12, 1999</td>
</tr>
<tr>
<td>10.10**</td>
<td>Employment Agreement, dated April 27, 2005, between Autobytel and Richard Post is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on May 3, 2005 (the &quot;May 2005 8-K&quot;)</td>
</tr>
<tr>
<td>10.11**</td>
<td>Employment Agreement, dated April 27, 2005, between Autobytel and Jeffrey Schwartz is incorporated herein by reference to Exhibit 10.2 of the May 2005 8-K</td>
</tr>
<tr>
<td>10.12**</td>
<td>1996 Stock Option Plan and related agreements are incorporated herein by reference to Exhibit 10.5 of the S-1 Amendment</td>
</tr>
<tr>
<td>10.13**</td>
<td>1996 Stock Incentive Plan and related agreements are incorporated herein by reference to Exhibit 10.6 of the S-1 Amendment</td>
</tr>
<tr>
<td>10.14**</td>
<td>autobytel.com inc. 2000 Stock Option Plan is incorporated herein by reference to Exhibit 99.1 of the Registration Statement filed on Form S-8 (File No. 333-39396) with the SEC on June 15, 2000</td>
</tr>
<tr>
<td>10.15**</td>
<td>Employment Agreement, dated April 27, 2005, between Autobytel and Richard Walker is incorporated herein by reference to Exhibit 10.3 of the May 2005 8-K</td>
</tr>
<tr>
<td>10.16**</td>
<td>autobytel.com inc. 2001 Restricted Stock Plan is incorporated herein by reference to Exhibit 4.3 to the Registration Statement filed on Form S-8 (File No. 333-67692) with the SEC on August 16, 2001 (the “August 2001 S-8”)</td>
</tr>
<tr>
<td>10.17**</td>
<td>Autoweb 1997 Stock Option Plan is incorporated herein by reference to Exhibit 4.4 of the August 2001 S-8</td>
</tr>
<tr>
<td>10.18**</td>
<td>Autoweb 1999 Equity Incentive Plan, as amended, is incorporated herein by reference to Exhibit 4.5 of the August 2001 S-8</td>
</tr>
<tr>
<td>10.19**</td>
<td>Autoweb 1999 Directors Stock Option Plan is incorporated herein by reference to Exhibit 4.6 of the August 2001 S-8</td>
</tr>
<tr>
<td>10.20**</td>
<td>Amendment No. 1 to the Auto-by-Tel Corporation 1996 Stock Incentive Plan is incorporated herein by reference to Exhibit (d)(2) of Schedule TO filed with the SEC on December 14, 2001 (the “Schedule TO”)</td>
</tr>
<tr>
<td>Number</td>
<td>Description</td>
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<tr>
<td>10.21**</td>
<td>Amendment No. 2 to the autobytel.com inc. 1998 Stock Option Plan is incorporated herein by reference to Exhibit (d)(5) of the Schedule TO</td>
</tr>
<tr>
<td>10.22**</td>
<td>Amendment No. 2 to the autobytel.com inc. 1999 Stock Option Plan is incorporated herein by reference to Exhibit (d)(8) of the Schedule TO</td>
</tr>
<tr>
<td>10.23**</td>
<td>Amendment No. 1 to the autobytel.com inc. 1999 Employee and Acquisition Related Stock Option Plan is incorporated herein by reference to Exhibit (d)(10) of the Schedule TO</td>
</tr>
<tr>
<td>10.24**</td>
<td>Amendment No. 1 to the autobytel.com inc. 2000 Stock Option Plan is incorporated herein by reference to Exhibit (d)(12) of the Schedule TO</td>
</tr>
<tr>
<td>10.25**</td>
<td>Amendment No. 2 to the autobytel.com inc. 2000 Stock Option Plan is incorporated herein by reference to Exhibit 10.46 of the Annual Report on Form 10-K for the Year Ended December 31, 2000 filed with the SEC on March 29, 2001</td>
</tr>
<tr>
<td>10.26**</td>
<td>Form of Stock Option Agreement pursuant to Auto-by-Tel Corporation 1996 Stock Incentive Plan is incorporated herein by reference to Exhibit (d)(13) of the Schedule TO</td>
</tr>
<tr>
<td>10.27**</td>
<td>Form of Stock Option Agreement pursuant to autobytel.com inc. 1998 Stock Option Plan is incorporated herein by reference to Exhibit (d)(14) of the Schedule TO</td>
</tr>
<tr>
<td>10.28**</td>
<td>Form of Stock Option Agreement pursuant to autobytel.com inc. 1999 Stock Option Plan is incorporated herein by reference to Exhibit (d)(15) of the Schedule TO</td>
</tr>
<tr>
<td>10.29**</td>
<td>Form of Stock Option Agreement pursuant to autobytel.com inc. 1999 Employee and Acquisition Related Stock Option Plan is incorporated herein by reference to Exhibit (d)(16) of the Schedule TO</td>
</tr>
<tr>
<td>10.30**</td>
<td>Form of Stock Option Agreement pursuant to autobytel.com inc. 2000 Stock Option Plan is incorporated herein by reference to Exhibit (d)(17) of the Schedule TO</td>
</tr>
<tr>
<td>10.31**</td>
<td>Form of Performance Stock Option Agreement pursuant to autobytel.com inc. 1999 Stock Option Plan is incorporated herein by reference to Exhibit (d)(18) of the Schedule TO</td>
</tr>
<tr>
<td>10.32**</td>
<td>Form of Non-employee Directors Stock Option Agreement pursuant to Auto-by-Tel Corporation 1996 Stock Incentive Plan is incorporated herein by reference to Exhibit (d)(19) of the Schedule TO</td>
</tr>
<tr>
<td>10.33**</td>
<td>Employment Agreement, dated May 30, 2005, between Autobytel and Michael Schmidt is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on June 2, 2005</td>
</tr>
<tr>
<td>10.34**</td>
<td>Employment Agreement, dated July 19, 2005, between Autobytel and Ariel Amir is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on July 22, 2005</td>
</tr>
<tr>
<td>10.35**</td>
<td>Letter Agreement, dated September 21, 2005, between Autobytel and Jill Richling is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on December 12, 2005</td>
</tr>
</tbody>
</table>
Table of Contents

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
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<tbody>
<tr>
<td>10.36**</td>
<td>2003 Amendment to Auto-By-Tel Corporation 1996 Employee Stock Purchase Plan</td>
</tr>
<tr>
<td></td>
<td>is incorporated herein by reference to Exhibit 10.1 of the Current Report</td>
</tr>
<tr>
<td></td>
<td>on Form 8-K filed with the Securities and Exchange Commission on August 31,</td>
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<tr>
<td></td>
<td>2006.</td>
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<tr>
<td>10.37**</td>
<td>Autobytel Inc. Amended and Restated 2001 Restricted Stock and Option Plan</td>
</tr>
<tr>
<td></td>
<td>is incorporated herein by reference to Exhibit 10.1 of the Current Report</td>
</tr>
<tr>
<td></td>
<td>on Form 8-K filed with the SEC on November 3, 2004 (the “November 2004 8-K”).</td>
</tr>
<tr>
<td>10.38**</td>
<td>Form of Outside Director Stock Option Agreement under the Autobytel 2004</td>
</tr>
<tr>
<td></td>
<td>Restricted Stock and Option Plan is incorporated herein by reference to</td>
</tr>
<tr>
<td></td>
<td>Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on October</td>
</tr>
<tr>
<td>10.39**</td>
<td>Form of Outside Director Stock Option Agreement under the Autobytel 2004</td>
</tr>
<tr>
<td></td>
<td>Restricted Stock and Option Plan is incorporated herein by reference to</td>
</tr>
<tr>
<td></td>
<td>Exhibit 10.2 of the November 2004 8-K.</td>
</tr>
<tr>
<td>10.40**</td>
<td>Autobytel Inc. 2004 Restricted Stock and Option Plan is incorporated herein</td>
</tr>
<tr>
<td></td>
<td>by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with</td>
</tr>
<tr>
<td></td>
<td>the SEC on May 1, 2006.</td>
</tr>
<tr>
<td>10.41**</td>
<td>Form of Employee Stock Option Agreement under the Autobytel 2004 Restricted</td>
</tr>
<tr>
<td></td>
<td>Stock and Option Plan is incorporated herein by reference to Exhibit 10.1</td>
</tr>
<tr>
<td></td>
<td>of the Current Report on Form 8-K filed with the SEC on May 1, 2006.</td>
</tr>
<tr>
<td>10.42**</td>
<td>Stock Option Agreement, dated September 21, 2004, between Autobytel and</td>
</tr>
<tr>
<td></td>
<td>Ariel Amir is incorporated herein by reference to Exhibit 10.1 of the</td>
</tr>
<tr>
<td></td>
<td>Current Report on Form 8-K filed with the SEC on December 31, 2004.</td>
</tr>
<tr>
<td>10.43**</td>
<td>Stock Option Agreement, dated September 21, 2004, between Autobytel and</td>
</tr>
<tr>
<td></td>
<td>Richard Walker is incorporated herein by reference to Exhibit 10.1 of the</td>
</tr>
<tr>
<td></td>
<td>Current Report on Form 8-K filed with the SEC on December 31, 2004.</td>
</tr>
<tr>
<td>10.44**</td>
<td>Letter agreement, dated March 9, 2004 between Autobytel and Michael F.</td>
</tr>
<tr>
<td></td>
<td>Schmidt is incorporated herein by reference to Exhibit 10.1 of the Current</td>
</tr>
<tr>
<td>10.45**</td>
<td>Form of Stock Option Agreement under the Autobytel 2004 Restricted Stock and</td>
</tr>
<tr>
<td></td>
<td>Option Plan is incorporated herein by reference to Exhibit 10.1 of the</td>
</tr>
<tr>
<td>10.46**</td>
<td>Employment Agreement dated March 1, 2006 between Autobytel Inc. and James E.</td>
</tr>
<tr>
<td></td>
<td>Riesenbach is incorporated herein by reference to Exhibit 10.1 of the</td>
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<td></td>
<td>Current Report on Form 8-K filed with the Securities and Exchange Commission</td>
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<tr>
<td></td>
<td>on March 7, 2006, as amended by Amendment No. 1 to Employment Agreement dated</td>
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<td></td>
<td>December 10, 2008, which is incorporated herein by reference to Exhibit 10.2</td>
</tr>
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<td></td>
<td>of the Current Report on Form 8-K filed with the SEC on December 15, 2008.</td>
</tr>
<tr>
<td>10.47**</td>
<td>First Amendment to Employment Agreement dated March 7, 2006 between</td>
</tr>
<tr>
<td></td>
<td>Autobytel Inc. and Richard Post is incorporated herein by reference to</td>
</tr>
<tr>
<td></td>
<td>Exhibit 10.2 of the Current Report on Form 8-K filed with the Securities and</td>
</tr>
<tr>
<td>10.48**</td>
<td>First Amendment to Employment Agreement dated March 7, 2006 between</td>
</tr>
<tr>
<td></td>
<td>Autobytel Inc. and Richard Walker is incorporated herein by reference to</td>
</tr>
<tr>
<td></td>
<td>Exhibit 10.3 of the Current Report on Form 8-K filed with the Securities and</td>
</tr>
<tr>
<td>10.49**</td>
<td>Extension Letter dated February 27, 2006 from Autobytel Inc. to Richard A.</td>
</tr>
<tr>
<td></td>
<td>Post is incorporated herein by reference to Exhibit 10.1 of the Current</td>
</tr>
<tr>
<td></td>
<td>Report on Form 8-K filed with the Securities and Exchange Commission on March</td>
</tr>
<tr>
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<td>3, 2006.</td>
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<tr>
<td>10.50**</td>
<td>First Amendment to Employment Agreement dated as of April 26, 2006 between</td>
</tr>
<tr>
<td></td>
<td>Autobytel Inc. and Michael Schmidt is incorporated herein by reference to</td>
</tr>
<tr>
<td></td>
<td>Exhibit 10.1 of the Current Report on Form 8-K filed with the Securities and</td>
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<td></td>
<td>Exchange Commission on May 1, 2006.</td>
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<tr>
<td>10.51**</td>
<td>2006 Inducement Stock Option Plan is incorporated herein by reference to Exhibit 4.9 of the Registration Statement on Form S-8 (File No. 333-135076) filed with the Securities and Exchange Commission on June 16, 2006 (the “2006 S-8”)</td>
</tr>
<tr>
<td>10.52**</td>
<td>Form of Employee Inducement Stock Option Agreement is incorporated herein by reference to Exhibit 4.10 of the 2006 S-8</td>
</tr>
<tr>
<td>10.53**</td>
<td>Inducement Stock Option Agreement dated March 20, 2006 between James E. Riesenbach and Autobytel is incorporated herein by reference to Exhibit 4.11 of the 2006 S-8</td>
</tr>
</tbody>
</table>
| 10.54† | Settlement Agreement entered into as of December 19, 2006 among Autobytel Inc., The Cobalt Group, Inc., Dealix Corporation and for limited purposes WP Equity Partners, Inc. is incorporated herein by reference to Exhibit 10.76 of the Annual Report on Form 10-K for the Year Ended December 31, 2006 filed with the SEC on March 17, 2007 (the “2006 10-K”)
<p>| 10.55 ** | Employment Agreement, made as of June 5, 2000, between Autobytel Inc. and Russell Bartlett is incorporated herein by reference to Exhibit 10.77 of the 2006 10-K |
| 10.56** | Letter agreement, dated November 10, 2005, between Autobytel Inc. and Russell Bartlett is incorporated herein by reference to Exhibit 10.78 of the 2006 10-K |
| 10.57** | Employment Agreement, made as of February 8, 2002, between Autobytel Inc. and Mark Garms is incorporated herein by reference to Exhibit 10.79 of the 2006 10-K |
| 10.58** | Letter agreement, dated July 12, 2004, between Autobytel Inc. and Mark Garms is incorporated herein by reference to Exhibit 10.80 of the 2006 10-K |
| 10.59** | Employment Agreement, dated as of January 30, 2007 between the Company and Mr. Houdeshell is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on February 2, 2007, as amended by Amendment No.1 to Employment Agreement dated December 20, 2008, which is incorporated herein by reference to Exhibit 10.3 of the Current Report on Form 8-K filed with the SEC on February 4, 2009 |
| 10.60** | Inducement Stock Option Agreement, dated January 30, 2007 between the Company and Mr. Houdeshell is incorporated herein by reference to Exhibit 10.2 of the Current Report on Form 8-K filed with the SEC on February 2, 2007 |
| 10.61** | Second Amendment to Employment Agreement, dated as of March 16, 2007 between the Company and Michael Schmidt is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on March 22, 2007 |
| 10.62** | Stock Purchase Agreement, dated as of June 29, 2007, between the Company, Retention Performance Marketing, Inc. and Call Command, Inc. is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on July 5, 2007 |
| 10.63** | 2007 Amendment to Auto-By-Tel Corporation 1996 Employee Stock Purchase Plan is incorporated herein by reference to Exhibit 10.2 of Form 10-Q for the Quarter Ended June 30, 2007 filed with the SEC on August 9, 2007 |
| 10.64** | First Amendment to Employment Agreement, dated as of July 19, 2007, between the Company and Ariel Amir is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on July 20, 2007 |</p>
<table>
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<tr>
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<tbody>
<tr>
<td>10.65**</td>
<td>Letter agreement, dated July 30, 2007, between the Company and Russell Bartlett is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on August 3, 2007</td>
</tr>
<tr>
<td>10.66**</td>
<td>Letter Agreement, dated October 30, 2007, between the Company and Jill Richling is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on November 5, 2007</td>
</tr>
<tr>
<td>10.67**</td>
<td>Letter Agreement dated October 4, 2007 between the Company and Curtis DeWalt is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on November 15, 2007</td>
</tr>
<tr>
<td>10.68**</td>
<td>Letter Agreement dated October 30, 2007 between the Company and Curtis DeWalt is incorporated herein by reference to Exhibit 10.2 of the Current Report on Form 8-K filed with the SEC on November 15, 2007</td>
</tr>
<tr>
<td>10.69**</td>
<td>Letter Agreement dated June 19, 2006 between the Company and Jonathan Rosen is incorporated herein by reference to Exhibit 10.70 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008</td>
</tr>
<tr>
<td>10.70**</td>
<td>Letter Agreement dated August 9, 2006 between the Company and Jonathan Rosen is incorporated herein by reference to Exhibit 10.71 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008</td>
</tr>
<tr>
<td>10.71**</td>
<td>Letter Agreement dated July 19, 2007 between the Company and Jonathan Rosen is incorporated herein by reference to Exhibit 10.72 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008</td>
</tr>
<tr>
<td>10.72**</td>
<td>Letter Agreement between the Company and Mark Canon is incorporated herein by reference to Exhibit 10.73 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008 is incorporated herein by reference to Exhibit 10.73 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008</td>
</tr>
<tr>
<td>10.73**</td>
<td>Letter Agreement dated June 21, 2006 between the Company and Mark Canon is incorporated herein by reference to Exhibit 10.74 of the Annual Report on Form 10-K filed with the SEC on March 17, 2008</td>
</tr>
<tr>
<td>10.74**</td>
<td>Employment Agreement dated December 11, 2008 between Autobytel Inc. and Jeffrey H. Coats is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the Securities and Exchange Commission on December 15, 2008</td>
</tr>
<tr>
<td>10.75**</td>
<td>Employment Agreement dated February 8, 2002 between Company and Mark A. Garms, as amended by Memorandum dated as of December 8, 2008 and Memorandum dated as of March 1, 2009</td>
</tr>
<tr>
<td>10.76**</td>
<td>Amended and Restated Severance Agreement dated as of September 29, 2008 between the Company and Mark A. Garms is incorporated herein by reference to Exhibit 10.3 of the Current Report on Form 8-K filed with the SEC on October 3, 2008</td>
</tr>
<tr>
<td>10.77**</td>
<td>Letter Agreement dated October 10, 2006 between Company and Glenn E. Fuller, as amended by Memorandum dated April 18, 2008, Memorandum dated as of December 8, 2008, and Memorandum dated as of March 1, 2009</td>
</tr>
<tr>
<td>10.78**</td>
<td>Amended and Restated Severance Agreement dated as of September 29, 2008 between the Company and Glenn E. Fuller is incorporated herein by reference to Exhibit 10.4 of the Current Report on Form 8-K filed with the SEC on October 3, 2008</td>
</tr>
<tr>
<td>10.79**</td>
<td>Letter Agreement dated October 4, 2007 between Company and Curtis E. DeWalt, as amended by Memorandum dated as of December 8, 2008 and Memorandum dated March 1, 2009</td>
</tr>
<tr>
<td>10.80**</td>
<td>Amended and Restated Severance Agreement dated as of September 29, 2008 between the Company and Curtis E. DeWalt is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 9, 2009</td>
</tr>
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<td>Number</td>
<td>Description</td>
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<tr>
<td>10.81* **</td>
<td>Letter Agreement dated August 6, 2004 between Company and Wes Ozima, as amended by Memorandum dated March 1, 2009</td>
</tr>
<tr>
<td>10.82* **</td>
<td>Amended and Restated Severance Agreement dated as of November 15, 2008 between Company and Wesley Ozima</td>
</tr>
<tr>
<td>10.83**</td>
<td>Form of Restricted Stock Award under the Amended and Restated 2001 Restricted Stock and Option Plan and the 2004 Restricted Stock and Option Plan is incorporated herein by reference to Exhibit 10.1 of the Current Report on Form 8-K filed with the SEC on October 3, 2008</td>
</tr>
<tr>
<td>10.84**</td>
<td>Form of Option Agreement under the 1998 Stock Option Plan, the 1999 Employee and Acquisition Related Stock Option Plan and the 1999 Stock Option Plan is incorporated herein by reference to Exhibit 10.2 of the Current Report on Form 8-K filed with the SEC on October 3, 2008</td>
</tr>
<tr>
<td>21.1*</td>
<td>Subsidiaries of Autobytel</td>
</tr>
<tr>
<td>23.1*</td>
<td>Consent of Independent Registered Public Accounting Firm, Ernst &amp; Young LLP</td>
</tr>
<tr>
<td>23.2*</td>
<td>Consent of Independent Registered Public Accounting Firm, McGladry &amp; Pullen</td>
</tr>
<tr>
<td>24.1*</td>
<td>Power of Attorney (included in the signature page hereto)</td>
</tr>
<tr>
<td>31.1*</td>
<td>Chief Executive Officer Section 302 Certification of Periodic Report, dated March 13, 2009</td>
</tr>
<tr>
<td>31.2*</td>
<td>Chief Financial Officer Section 302 Certification of Periodic Report, dated March 13, 2009</td>
</tr>
<tr>
<td>32.1*</td>
<td>Chief Executive Officer and Chief Financial Officer Section 906 Certification of Periodic Report, dated March 13, 2009</td>
</tr>
</tbody>
</table>

* Filed herewith.

** Management Contract or Compensatory Plan or Arrangement

† Confidential treatment has been requested with regard to certain portions of this document. Such portions were filed separately with the Securities and Exchange Commission.
Autobytel.com Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Section 141 and 242 of the Delaware General Corporation Law, the Board of Directors has duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on April 16, 1998, as amended on July 22, 1998, declaring said amendment and restatement to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Section 228 and 242 of the Delaware General Corporation Law, the changes to be effected by this Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Fifth Amended and Restated Certificate of Incorporation restates and amends the provisions of this Corporation's Amended and Restated Certificate of Incorporation.

FIFTH: That the text of the Amended and Restated Certificate of Incorporation is hereby restated and amended in its entirety as set forth in Exhibit A attached hereto.
IN WITNESS WHEREOF, this Fifth Amended and Restated Certificate of Incorporation has been signed this 14th day of December, 1998.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Title: President

ATTEST:

By: /s/ Craig S. Frost
Title: Secretary
ARTICLE I

The name of the corporation is autobytel.com inc. (the “Corporation”).

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, zip code 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

A. Classes of Stock. This Corporation is authorized to issue two classes of stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this Corporation is authorized to issue is sixty-one million four hundred forty-five thousand one hundred eighty-seven (61,445,187). The number of shares of Preferred Stock authorized to be issued is eleven million four hundred forty-five thousand one hundred eighty-seven (11,445,187), par value $0.001 per share, one million five hundred thousand (1,500,000) of which have been designated Series A Preferred Stock (the “Series A Preferred Stock”), nine hundred sixty-seven thousand nine hundred fifteen (967,915) of which have been designated Series B Preferred Stock (the “Series B Preferred Stock”), six million nine hundred seventy-seven thousand two hundred seventy-two (6,977,272) of which have been designated Series C Preferred Stock (the “Series C Preferred Stock”), and two million (2,000,000) of which shall be undesignated. The Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be hereinafter referred to collectively as the “Preferred Stock.” The number of shares of Common Stock authorized to be issued is fifty million (50,000,000), par value $0.001 per share.
B. Rights, Preferences and Restrictions of the Preferred Stock.

The undesignated shares of Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

Section 1. Dividends.

(a) The holders of outstanding shares of Series C Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Series A Preferred Stock, Series B Preferred Stock or Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series C Preferred Stock. The holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Series B Preferred Stock or Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series A Preferred Stock. The holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series B Preferred Stock. The right to such dividends shall not be cumulative and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on such shares are not declared in any prior year. No dividend or other distribution shall be made with respect to the Series B Preferred Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Series C Preferred Stock and Series A Preferred Stock. No dividend or other distribution shall be made with respect to the Common Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Series C Preferred Stock. No dividend or other distribution shall be made with respect to the Common Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Preferred Stock.
(b) Definition of Distribution. For purposes of this Section 1, unless the context otherwise requires, a “distribution” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, payable other than in Common Stock, or the purchase or redemption of shares of the Corporation (other than repurchases at cost of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase) for cash or property.

Section 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock or Common Stock, an amount equal to $8.80 per share for each share of Series C Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the “Series C Liquidation Preference”); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series C Preferred Stock shall be entitled to receive, at their option, either the Series C Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series C Preferred Stock into Common Stock immediately prior to such event. If the assets and funds thus distributed among the holders of Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the number of shares of Series C Preferred Stock then held by them.

(b) After payment has been made to the holders of Series C Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraph (a) of this Section 2, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Series B Preferred Stock or Common Stock, an amount equal to $10.00 per share for each share of Series A Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the “Series A Liquidation Preference”); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series A Preferred Stock shall be entitled to receive, at their option, either the Series A Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series A Preferred Stock into Common Stock immediately prior to such event.
If the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution to the holders of Series A Preferred Stock shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the number of shares of Series A Preferred Stock then held by them.

(c) After payment has been made to the holders of Series C Preferred Stock and Series A Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraphs (a) and (b) of this Section 2, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock, an amount equal to $9.35 per share for each share of Series B Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the “Series B Liquidation Preference”); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series B Preferred Stock shall be entitled to receive, at their option, either the Series B Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series B Preferred Stock into Common Stock immediately prior to such event. If the assets and funds thus distributed among the holders of Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution to the holders of Series B Preferred Stock shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the number of shares of Series B Preferred Stock then held by them.

(d) After payment has been made to the holders of Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraphs (a), (b) and (c) of this Section 2, then the entire remaining assets and surplus funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of Common Stock based upon the number of shares of Common Stock then held by them.

(e) A merger or consolidation of the Corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into the Corporation, in which the stockholders of the Corporation receive distributions in cash or securities of another corporation or corporations as a result of such consolidation or merger and in which the stockholders of the Corporation do not own at least 50% of the voting power of the surviving corporation after the consolidation or merger, or a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 2.
Section 3. Conversion. The holders of the Preferred Stock shall have conversion rights (the “Conversion Rights”) as follows:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $10.00 in the case of the Series A Preferred Stock, $9.35 in the case of the Series B Preferred Stock, or $8.80 in the case of the Series C Preferred Stock by the Conversion Price, determined as hereinafter provided, in effect for such series of Preferred Stock at the time of conversion. The initial Conversion Price per share shall be $9.00 for the Series A Preferred Stock, $10.36 for the Series B Preferred Stock and $13.20 for the Series C Preferred Stock. The Conversion Price per share of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be subject to adjustment as hereinafter provided. Upon conversion, all declared and unpaid dividends on the Preferred Stock shall be paid in cash, to the extent legally permitted and in accordance with Section 4(B)(1)(a) hereof.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall, with notice to the holders thereof delivered promptly thereafter, automatically be converted into shares of Common Stock at the applicable Conversion Price then in effect upon the earlier of (A) the date upon which this Corporation obtains the consent of the holders of two-thirds of the then outstanding shares of Preferred Stock, voting together as a single class, (B) (1) in the case of Series A Preferred Stock, the date on which fewer than 300,000 shares of Series A Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, (2) in the case of Series B Preferred Stock, the date on which fewer than 200,000 shares of Series B Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, (3) in the case of Series C Preferred Stock, the date on which fewer than 250,000 shares of Series C Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, or (C) the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share (before deduction of underwriter discounts and commissions and offering expenses) of not less than $13.50 per share (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the date of the filing of this Certificate of Incorporation) and an aggregate offering price to the public of not less than $30,000,000 (the “Initial Public Offering”).
In the event of the automatic conversion of the Preferred Stock as set forth in Section 3(b)(i)(C) above, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair value of the Common Stock, as determined in good faith by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; provided, however, that in the event of an automatic conversion pursuant to Section 3(b)(i), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. The Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion on the record date for such conversion, which shall not be earlier than the date notice of conversion is received by holders, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments to Conversion Price for Stock Splits, Distributions and Recapitalizations.

(i) Stock Splits, Subdivisions, Dividends and Distributions. In the event this Corporation should at any time or from time to time after the Original Issue
Date (as defined below), fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as “Common Stock Equivalents”) without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price in effect for each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(ii) Combinations. If the number of shares of Common Stock outstanding at any time after the Original Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination (or the date of such combination if no record date is fixed), the Conversion Price in effect for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(iii) Other Distributions. In the event this Corporation shall at any time or from time to time after the Original Issue Date, fix a record date for the determination of holders of Common Stock entitled to receive a distribution payable in securities of the Corporation or other persons, evidences of indebtedness issued by this Corporation or other persons, assets or options or rights not referred to in Section 3(d)(i), then, in each such case for the purpose of this Section 3(d)(iii), the holders of shares of Preferred Stock shall, as of such record date, be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of such record date.

(iv) Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock whereby the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by reorganization, reclassification or otherwise, (other than a subdivision, dividend, combination or merger or sale of assets transaction provided for elsewhere in this Section 3), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the shares of Preferred Stock the number of shares of stock or other securities or property of the Corporation which a holder of Common Stock deliverable upon conversion would have been entitled to receive on such recapitalization. In any such case, appropriate adjustment shall be made in the
application of the provisions of this Section 3 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect for each series of Preferred Stock and the number of shares issuable upon conversion of shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(e) Adjustments to Conversion Price. Subject to the terms of Section 6 hereof, the Conversion Price in effect from time to time for each series of Preferred Stock shall be subject to adjustment in certain cases as follows:

(i) Special Definitions. For purposes of this Section 3, the following definitions shall apply:

(A) “Options” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) “Original Issue Date” shall mean the date on which the first share of such series of Preferred Stock was first issued.

(C) “Convertible Securities” shall mean any evidences of indebtedness, Preferred Stock or other securities convertible into or exchangeable for Common Stock.

(D) “Additional Shares of Common” shall mean all shares of Common Stock issued (or, pursuant to Section 3(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(2) up to a maximum of 3,333,333 shares (as appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the date of the filing of this Certificate of Incorporation) to officers, directors or employees of, or consultants to, the Corporation (other than Peter Ellis or John Bedrosian) pursuant to a stock grant, stock option plan or stock purchase plan or other stock incentive agreement or arrangement approved by the Board of Directors;

(3) as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;
(4) in connection with any transaction for which adjustment is made pursuant to Section 3(d) hereof;

(5) upon the exercise of warrants granted incidental to a bona fide commercial transaction (unless the grant of such warrant is opposed by the holders of more than two-thirds of the Preferred Stock, voting together as a single class, following notice from the Corporation to the holders of Preferred Stock to be delivered to such holders at least ten (10) business days prior to such grant; provided further that no notice need be given and the holders of the Preferred Stock shall not have the right to object to the issuance of warrants to purchase up to a maximum of 3,333 shares so long as they are granted incidental to a bona fide commercial transaction and approved by the Board of Directors); and

(6) any shares of Common Stock issued, issuable or, pursuant to Section 3(e)(iii), deemed to be issued, if the holders of a majority of the Series A Preferred Stock and Series B Preferred Stock and Series C Preferred Stock, voting together as a class, agree in writing that such shares shall not constitute Additional Shares of Common.

(ii) No Adjustment of Conversion Price. Subject to the terms of Section 6 hereof, no adjustment in the Conversion Price for each series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue.

(iii) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number, including provisions designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 3(e)(v) hereof) of such Additional Shares of Common would be less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:
(A) no further adjustment in the Conversion Price for a series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time, by reason of antidilution provisions or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such change becoming effective, be recomputed to reflect an appropriate increase or decrease reflecting such change insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock;

(C) upon the expiration or cancellation of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration or cancellation, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all Convertible Securities which were actually converted or exchanged plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and
(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the applicable Conversion Price on the original adjustment date, or (2) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 3(e)(iii)) for a consideration per share less than the Conversion Price for a particular series of Preferred Stock in effect on the date of, and immediately prior to, such issue, then and in such event, the Conversion Price of such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued; provided, that, for the purposes of this Section 3(e)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities or Preferred Stock shall be deemed to be outstanding; and, further provided, that immediately after any Additional Shares of Common are deemed issued pursuant to Section 3(e)(iii), such Additional Shares of Common shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 3(e), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

(A) Such consideration shall:

1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith in the exercise of reasonable business judgment by the Board of Directors of the Corporation; and

3) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for
consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities.

1) The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 3(e)(iii) shall be the sum of (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities plus (y) the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration, including any provisions designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

2) The number of Additional Shares of Common deemed to have been issued pursuant to Section 3(e)(iii) hereof shall be the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number, including any provisions designed to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price in effect for a series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of shares of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

Section 4. Redemption. The Preferred Stock shall not be redeemable.
Section 5. Voting Rights.

(a) General. Except as otherwise required by law or as set forth herein, each holder of shares of Preferred Stock shall be entitled to vote in all matters for which shareholders are entitled to vote, that number of votes equal to the whole number of shares of the Corporation's Common Stock issued or issuable upon the conversion of such holder's shares of Preferred Stock immediately after the close of business on the record date fixed for a shareholder meeting or the effective date of such written consent.

(b) Board of Directors. The authorized number of directors of the Corporation shall be set forth in the Bylaws of the Corporation and may be increased or decreased by an amendment to such Bylaws in accordance with their provisions. As long as 600,000 or more of the shares (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) of Series A Preferred Stock remain outstanding, the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the Corporation at each annual election of directors (and to fill any vacancies with respect thereto); provided that if the authorized number of directors is increased to greater than five (5) members, the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect two (2) directors at each annual election of directors (and to fill any vacancies with respect thereto).

Section 6. Covenants. In addition to any other rights provided by law, so long as at least an aggregate of 600,000 shares of Preferred Stock are outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of two-thirds of the outstanding shares of the Preferred Stock, voting as a single class:

(a) amend or repeal any provision of, or add any provision to, this Corporation's Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges, or powers of, or the restrictions provided for the benefit of, any series of Preferred Stock in an adverse manner;

(b) increase the number of directors to greater than ten (10) members;

(c) increase the number of authorized shares of any series of Preferred Stock;

(d) sell any shares for consideration other than cash or the forgiveness of debt;

(e) authorize any new shares or reclassify any Common Stock into shares of any class of stock having any preference or priority as to dividends, redemption rights, liquidation preferences, conversion rights, voting rights or rights otherwise superior to or on a parity with any such preference or priority of any series of outstanding Preferred Stock;
(f) sell or otherwise dispose of all or substantially all of the assets or business of the Corporation;

(g) effect a consolidation, reorganization or merger (including, without limitation, the issuance of any shares of stock, or rights to acquire shares of stock, which would result in the stockholders of the Corporation immediately prior to such issuance owning less than two-thirds of the voting power of the Corporation on a fully diluted basis after such issuance) of the Corporation with or into any other corporation;

(h) declare or pay any dividends, in cash or otherwise, or make any distributions to its shareholders, or purchase, redeem or otherwise acquire any of its outstanding capital stock, or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any shares of its capital stock;

(i) purchase, acquire or agree to purchase or acquire or invest in the business, property or assets of, or any securities of, any other company or business, except that the Corporation may (A) invest its excess cash in Cash Equivalents and (B) make such purchase, acquisition or investment with respect to a wholly-owned subsidiary of the Corporation to the extent otherwise permitted hereunder;

(j) create, assume, incur, issue, guarantee or otherwise become directly or indirectly liable in respect of any Indebtedness;

(k) sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any properties or assets from, or enter into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate other than in the ordinary course of business.

For purposes of this Section 6:

1) the term “Cash Equivalents” means (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof having maturities of not more than six months from the date of acquisition, (ii) certificates of deposit or Eurodollar time deposits having maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of $500 million and a Keefe Bank Watch Rating of “B” or better, (iii) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i) and (ii) entered into with any financial institution meeting the qualifications described in clause (ii) above, and (iv) commercial paper of any person that is not a subsidiary or an Affiliate of the Corporation having the highest rating obtainable from Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Group, and maturing within six months after the date of acquisition;
2) the term “Indebtedness” means, with respect to any person or entity, calculated without duplication, any indebtedness of such person or entity, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or bankers’ acceptances or representing capital lease obligations or the balance deferred and unpaid of the purchase price of any property, or guarantees of any of the foregoing, except any such balance that constitutes an accrued expense or trade payable to the extent that any such accrued expense or trade payable is not more than 90 days overdue or is otherwise being contested in good faith by appropriate proceedings promptly instituted and diligently conducted; and

3) the term “Affiliate” means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under direct or indirect common control with, such person or entity (for purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by agreement or otherwise); provided that no holder of Preferred Stock (or Common Stock issued upon conversion thereof) shall be deemed to be an Affiliate.

Notwithstanding the foregoing, the Corporation may undertake an initial public offering unless the initial public offering is opposed in writing by the holders of two-thirds of the Preferred Stock, voting as a single class, following notice to such holders at least 30 days prior to the filing of a registration statement with the Securities and Exchange Commission relating to such initial public offering. In addition, in connection with any such initial public offering, unless the holders of two-thirds of the Preferred Stock shall have opposed such initial public offering as aforesaid, the holders of the Preferred Stock shall not have a separate vote as a single class with respect to amendments to the Certificate of Incorporation in connection with such initial public offering to increase the authorized Common Stock, create a class of undesignated Preferred Stock, or effect a stock split, which amendments are proposed in connection with such initial public offering.

Notwithstanding any other provision herein, the requirement of the approval of the holders of two-thirds of the holders of Preferred Stock in this Section 6 shall not be amended or modified without the unanimous approval of the holders of Preferred Stock.

Section 7. Reacquired Shares. Any shares of Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.
Section 8. Status of Converted or Redeemed Stock. In the event any shares of Preferred Stock shall be redeemed or converted, the shares so converted or redeemed shall be canceled and shall not have the status of authorized but unissued shares of Preferred Stock and shall not be issuable by the Corporation and the Certificate of Incorporation of this Corporation shall be amended to effect the corresponding reduction in the Corporation’s capital stock.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

The election of directors need not be by written ballot unless a stockholder demands election by written ballot at a meeting of stockholders and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

The number of directors which constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE VIII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE IX

(A) No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director (1) shall be liable under Section 174 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (2) shall be liable by reason that, in addition to any and all other requirements for liability, he:

(i) shall have breached his duty of loyalty to the Corporation or its stockholders;

(ii) shall not have acted in good faith or, in failing to act, shall not have acted in good faith;
(iii) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law; or

(iv) shall have derived an improper personal benefit.

If the Delaware General Corporation Law is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

(B) The Corporation shall indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(C) Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may (in the case of any action, suit or proceeding against an officer, employee or agent) be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article IX.

(D) The indemnification and other rights set forth in this Article IX shall not be exclusive of any provisions with respect thereto in the By-Laws or any other contract or agreement between the Corporation and any officer, director, employee or agent of the Corporation.

(E) Neither the amendment nor repeal of this Article IX, paragraph (B), (C) or (D), nor the adoption of any provision of this Certificate of Incorporation inconsistent with Article IX, paragraph (B), (C) or (D), shall eliminate or reduce the effect of this Article IX, paragraphs (B), (C) or (D), in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of
action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article IX, paragraph (B), (C) or (D), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

ARTICLE X

At the election of directors of the Corporation, each holder of stock of any class or series shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XII

Effective upon the Initial Public Offering (as defined in Article IV Section 3(b)(i) above), the stockholders of the Corporation may not take action by written consent without a meeting but must take such action at a duly called annual or special meeting of stockholders.

ARTICLE XIII

Subject to the limitations set forth herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.”
Autobytel.com Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Sections 141 and 242 of the Delaware General Corporation Law, the Board of Directors of this Corporation has duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on December 14, 1998, declaring said amendment to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Sections 228 and 242 of the Delaware General Corporation Law, the changes to be effected by this Amendment to the Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Amendment to the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

The following sentence shall be added to the end of Section 3(b)(ii) of Article IV, B:

“In addition, immediately prior to the closing of an underwritten public offering as described in Section 3(b)(i)(C) above, all designated but unissued shares of Series C Preferred Stock shall be retired and restored to the status of authorized, undesignated and unissued shares of Preferred Stock.”
Section 8 of Article IV, B shall be deleted and inserted therefor shall be the following provisions:

“Section 8. Status of Converted or Redeemed Preferred Stock. In the event all shares of any class or series of Preferred Stock shall be redeemed or converted including, without limitation, in connection with an underwritten public offering as described in Section 3(b)(i)(C) of Article IV, B hereof, the shares so converted or redeemed shall be deemed to be retired and shall resume the status of authorized, undesignated and unissued shares of Preferred Stock.”

The second sentence of Section 3 of Article IV, B shall be amended and restated to read as follows:

“The initial Conversion Price per share shall be $9.00 for the Series A Preferred Stock, $10.37 for the Series B Preferred Stock and $13.20 for the Series C Preferred Stock.”

Article VII shall be amended by adding the following provisions thereto:

“Effective upon the consummation of an underwritten public offering as described in Section 3(b)(i)(C) of Article IV, B hereof, the terms of office of the Board of Directors will be divided into three classes: the Class I term will expire at the annual meeting of stockholders to be held in 1999; the Class II term will expire at the annual meeting of stockholders to be held in 2000; and the Class III term will expire at the annual meeting of stockholders to be held in 2001. At each annual meeting of stockholders after the initial classification, the successors to directors whose term will then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. The directorships will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.”
IN WITNESS WHEREOF, this Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been signed this 1st day of March, 1999.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Name: Mark W. Lorimer
Title: President and CEO

ATTEST:

By: /s/ Craig S. Frost
Name: Craig S. Frost
Title: Secretary
SECOND CERTIFICATE OF AMENDMENT
OF THE
FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
AUTOBYTEL.COM INC.
A Delaware Corporation

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Sections 141 and 242 of the Delaware General Corporation Law, the Board of Directors of this Corporation has duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on December 14, 1998, as amended by that Certificate of Amendment dated March 1, 1999, declaring said amendment to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Section 242 of the Delaware General Corporation Law, the changes to be effected by this Amendment to the Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the Delaware General Corporation Law, this Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

Article IV, Section A shall be amended and restated as follows:

“A. Classes of Stock. This Corporation is authorized to issue two classes of stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this Corporation is authorized to issue is two hundred eleven million four hundred forty-five thousand one hundred eighty-seven (211,445,187). The number of shares of Preferred Stock authorized to be issued is eleven million four hundred forty-five thousand one hundred eighty-seven.”
(11,445,187), par value $0.001 per share. The number of shares of Common Stock authorized to be issued is two hundred million (200,000,000), par value $0.001 per share.”

IN WITNESS WHEREOF, this Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been signed this 22nd day of July, 1999.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Name: Mark W. Lorimer
Title: President and CEO

ATTEST:

By: /s/ Ariel Amir
Name: Ariel Amir
Title: Secretary
THIRD CERTIFICATE OF AMENDMENT
OF THE
FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
AUTOBYTEL.COM INC.
A DELAWARE CORPORATION

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Section 242 of the Delaware General Corporation Law, this Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

“Article I.

The name of the corporation is Autobytel Inc. (the “Corporation”).”

THIRD: That pursuant to Section 242 of the Delaware General Corporation Law, the foregoing amendment of the Fifth Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

FOURTH: That pursuant to Section 242 of the Delaware General Corporation Law, the foregoing amendment of the Fifth Amended and Restated Certificate of Incorporation has been duly approved by the holders of the requisite number of shares of the Corporation.
IN WITNESS WHEREOF, the Corporation has caused this Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation to be signed by Mark W. Lorimer, its President and CEO, and Ariel Amir, its Secretary, this 14th day of August, 2001.

By: /s/ Mark W. Lorimer
   Mark W. Lorimer
   President and CEO

By: /s/ Ariel Amir
   Ariel Amir
   Secretary
CERTIFICATE OF DESIGNATION

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Autobytel Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the “Company”), hereby certifies that the following resolution was adopted by the Board of Directors of the Company as required by Section 151 of the General Corporation Law at a meeting duly called and held on July 30, 2004:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Company in accordance with the provisions of its Fifth Amended and Restated Certificate of Incorporation, as amended, the Board of Directors hereby creates a series of Preferred Stock, par value $0.001 per share, of the Company and hereby states the designation and number of shares, and fixes the relative designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof (in addition to the provisions set forth in its Fifth Amended and Restated Certificate of Incorporation of the Company, which are applicable to the Preferred Stock of all classes and series), as follows:

Series A Junior Participating Preferred Stock:

Section 1. Designation and Amount. Two million (2,000,000) shares of Preferred Stock, $0.001 par value, are designated “Series A Junior Participating Preferred Stock” with the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions specified herein (the “Junior Preferred Stock”). Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Junior Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Junior Preferred Stock.

Section 2. Dividends and Distributions. (A) Subject to the rights of the holders of any shares of any series of Preferred
Stock (or any similar stock) ranking prior and superior to the Junior Preferred Stock with respect to dividends, the holders of shares of Junior Preferred Stock, in preference to the holders of Common Stock, par value $0.001 per share (the “Common Stock”), of the Company, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of April, July, October and January in each year (each such date being referred to herein as a “Quarterly Dividend Payment Date”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of (a) $1.00 per share or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Junior Preferred Stock. In the event the Company shall at any time declare or pay any dividend or distribution on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

The Company shall declare a dividend or distribution on the Junior Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided, that in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per share on the Junior Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

Dividends shall begin to accrue and be cumulative on outstanding shares of Junior Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Junior Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Junior Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Junior Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.
Section 3. Voting Rights. The holders of Junior Preferred Stock shall have the following voting rights:

(A) Subject to the provisions for adjustment hereinafter set forth, each share of Junior Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Company. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designation creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Junior Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Company having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Company.

(C) Except as set forth herein, or as otherwise provided by law, holders of Junior Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whatever quarterly dividends or other dividends or distributions payable on the Junior Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Junior Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock;
(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except dividends paid ratably on the Junior Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amount to which the holders of all such shares are then entitled:

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Junior Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Junior Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Junior Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Amended and Restated Certificate of Incorporation, or in any other Certificate of Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock unless, prior thereto, the holders of shares of Junior Preferred Stock shall have received $100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Junior Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except distributions made ratably on the Junior Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Junior
Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, Etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Junior Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Junior Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Junior Preferred Stock shall not be redeemable.

Section 9. Rank. The Junior Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Company’s Preferred Stock.

Section 10. Amendment. The Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, shall not be amended in any manner which would materially alter or change the powers, preferences or special rights in the Junior Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Junior Preferred Stock, voting together as a single class.

In Witness Whereof, the undersigned have executed this Certificate as of July 30, 2004.

/s/ Jeffrey Schwartz  
Jeffrey Schwartz  
Chief Executive Officer and President

/s/ Ariel Amir  
Ariel Amir  
Secretary
# TABLE OF CONTENTS

## ARTICLE I OFFICES
- Section 1.01 REGISTERED OFFICE
- Section 1.02 PRINCIPAL OFFICE
- Section 1.03 OTHER OFFICES

## ARTICLE II MEETINGS OF STOCKHOLDERS
- Section 2.01 ANNUAL MEETINGS
- Section 2.02 SPECIAL MEETINGS
- Section 2.03 PLACE OF MEETINGS
- Section 2.04 NOTICE OF MEETINGS
- Section 2.05 QUORUM
- Section 2.06 VOTING
- Section 2.07 LIST OF STOCKHOLDERS
- Section 2.08 INSPECTOR OF ELECTION
- Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS
- Section 2.10 ADVANCE NOTICE PROVISION FOR NOMINATION OF DIRECTORS
- Section 2.11 ADVANCE NOTICE PROVISION FOR PROPOSING BUSINESS AT A STOCKHOLDERS’ MEETING
- Section 2.12 ADJOURNED MEETING; NOTICE
- Section 2.13 ORGANIZATION

## ARTICLE III BOARD OF DIRECTORS
- Section 3.01 GENERAL POWERS
- Section 3.02 NUMBER
- Section 3.03 ELECTION OF DIRECTORS
- Section 3.04 RESIGNATIONS
- Section 3.05 VACANCIES
- Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING
- Section 3.07 FIRST MEETING
- Section 3.08 REGULAR MEETINGS
- Section 3.09 SPECIAL MEETINGS
- Section 3.10 QUORUM AND ACTION
- Section 3.11 ACTION BY CONSENT
- Section 3.12 COMPENSATION
- Section 3.13 COMMITTEES
- Section 3.14 MEETINGS AND ACTIONS OF COMMITTEES
- Section 3.15 CHAIRMAN OF THE BOARD
AMENDED AND RESTATED BYLAWS
OF
AUTOBYTEL.COM INC.
A DELAWARE CORPORATION

ARTICLE I
OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of autobytel.com inc. (hereinafter called the “Corporation”) shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the “Board”).

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings shall be held each year at such time, date and place as the Board shall determine by resolution. In the absence of such designation, the annual meeting of stockholders shall be held at 3:00 p.m., on the third Thursday in June at the principal office of the Corporation. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by the Chairman of the Board, or by the President, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of the General Corporation Law of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.
Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as designated by the Board of Directors and specified in the respective notices or waivers of notice thereof. In the absence of any such designation, stockholders’ meetings shall be held at the principal executive office of the Corporation.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail or nationally recognized overnight courier, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address as it appears on the registrar of the Corporation, or by transmitting a notice thereof to him at such address by telegraph, facsimile transmission, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called (no business other than that specified in the notice may be transacted). The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees who, at the time of the notice, the Board intends to present for election.

An affidavit of the mailing or other means of giving any notice of any stockholders’ meeting, executed by the secretary, assistant secretary or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice.

Section 2.05 QUORUM. Except as otherwise provided by statute or by the certificate of incorporation, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.
(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 6.05 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting, but the Board shall fix a new record date if the meeting is adjourned for more than thirty (30) days from the date set for the original meeting.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such
proxy, and it shall state the number of shares voted. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. This Section 2.09 shall no longer be effective once the Corporation shall be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended.

Section 2.10 ADVANCE NOTICE PROVISION FOR NOMINATION OF DIRECTORS. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of
persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.10 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.10.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder’s notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder’s notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

-6-
No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.10. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 2.11 ADVANCE NOTICE PROVISION FOR PROPOSING BUSINESS AT A STOCKHOLDERS’ MEETING. No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.11 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 2.11.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder’s notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder’s notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.11; provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.11 shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of an annual
meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Section 2.12 ADJOURNED MEETING; NOTICE When a meeting is adjourned to another time and place, unless the Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.13 ORGANIZATION. The Chief Executive Officer, or in the absence of the Chief Executive Officer, the Chairman of the Board, shall call the meeting of the stockholders to order, and shall act as chairman of the meeting. In the absence of the Chief Executive Officer, the Chairman of the Board, and all of the Vice Presidents, the stockholders shall appoint a chairman for such meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and the conduct of business. The Secretary of the corporation shall act as secretary of all meetings of the stockholders, but in the absence of the Secretary at any meeting of the stockholders, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE III
BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER. The authorized number of directors of the Corporation shall be eight (8) members until changed by an amendment of this Section 3.02. Directors need not be stockholders in the Corporation.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Except as provided in Sections 3.04 and 3.05 of these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director, including a director elected or appointed to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.
Section 3.04 RESIGNATIONS. Any director of the Corporation may resign at any time by giving written notice to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Unless otherwise provided in the Certificate of Incorporation or the Bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of
conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any three (3) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by orally communicating the time and place of the special meeting to him at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director.

Whenever notice is required to be given, either to a stockholder or a director, under any provision of the General Corporation Law of Delaware, the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting, whether in person or by proxy, shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of directors or committee of directors need be specified in any written waiver of notice.

All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a
majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of the time and place of holding an adjourned meeting of the Board need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meetings takes place, in the manner specified in Section 3.09 of these Bylaws, to the directors who were not present at the time of adjournment. The directors shall act only as a Board, and the individual directors shall have no power as such. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the quorum for that meeting.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board or such committee. Such action by written consent shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors’ fees, compensation (including without limitation cash compensation and/or the grant of stock options or stock) and reimbursement for expenses for attendance at directors’ meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board will establish and maintain an Audit Committee and a Compensation Committee. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, but no such committee shall have any power or authority to (i) amend the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board as provided in Section 151(a) of the General Corporation Law of Delaware, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation’s property and assets, (iv) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution or (v) amend the Bylaws of the Corporation; and, unless the board resolution establishing the committee, the Bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and

-11-
merger pursuant to Section 253 of the General Corporation Law of Delaware. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

In the absence of any member of any such committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may appoint another member of the Board to act at the meeting in the place of such absent member.

A majority of the members, or replacements thereof, of any such committee shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the members, or replacements thereof, of any such committee shall be regarded as the act or decision of the entire committee.

Section 3.14 MEETINGS AND ACTIONS OF COMMITTEES Meetings and actions of committees shall be governed by, and held and taken in accordance with, the following provisions of Article III of these Bylaws: Section 3.06 (place of meetings; meetings by telephone), Section 3.08 (regular meetings), Section 3.09 (special meetings; notice), Section 3.10 (quorum and action), and Section 3.11 (action by consent), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board, and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

Section 3.15 CHAIRMAN OF THE BOARD. The Board may elect a Chairman of the Board and may have one or more Vice Chairmen. The Chairman of the Board and the Vice Chairmen shall be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV
OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a Chief Executive Officer, a President, a Chief Operating Officer, a Secretary and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, one or more Vice Presidents (who may include a Chief Accounting Officer), one or more Assistant Vice Presidents, one or more Assistant Secretaries, and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. One person may hold two or more offices, except that the Secretary may not also hold the office of President. The salaries of all officers of the Corporation above the rank of Vice President shall be fixed by the Board, unless at the discretion of the Board, the Board elects to fix the salaries of officers at or below the rank of vice president.

Section 4.02 ELECTION. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws,
shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the Chief Executive Officer to appoint, such other officers as the business of the Corporation may require, including without limitation Vice Presidents and Assistant Secretaries, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board or the President from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause (subject to any right such officer may have under an employment contract with the Corporation), by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the Chief Executive Officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective; provided that this provision shall not supercede any powers of the Board or the Chief Executive Officer pursuant to Section 4.04.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.
Section 4.06 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer of the Corporation shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. He shall preside at all meetings of stockholders and the Board. He shall have the general powers and duties of management usually vested in the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board or as prescribed by the Bylaws. In the absence or disability of the President, the Chief Executive Officer, in addition to his assigned duties and powers, shall perform all the duties of the President and when so acting shall have all the powers and be subject to all restrictions upon the President.

Section 4.07 PRESIDENT. The President shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Chief Executive Officer (unless the President is also the Chief Executive Officer) or by the Board or as is prescribed by the Bylaws. In the absence or disability of the President, the Chief Executive Officer, the President shall perform all of the duties of the Chief Executive Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Executive Officer.

Section 4.08 CHIEF OPERATING OFFICER The Chief Operating Officer shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Chief Executive Officer or by the Board. In the absence or disability of both the Chief Executive Officer and the President, the Chief Operating Officer shall perform all of the duties of the Chief Executive Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Executive Officer.

Section 4.09 CHIEF FINANCIAL OFFICER The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director for a purpose reasonably related to his position as director.

The Chief Financial Officer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 4.10 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, by the Board or as is prescribed by the Bylaws. A Vice President may also be designated as a “Senior Vice President” or “Executive Vice President.” In the absence or disability of the President, the Vice Presidents, in order of their rank as fixed by the Board, or if
not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President. A Vice President may be designated the Chief Accounting Officer who may be the Chief Financial Officer, and any person so designated shall have such powers as is customary for a Chief Accounting Officer.

Section 4.11 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors’ meetings, the number of shares present or represented at stockholders’ meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation’s transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.12 ASSISTANT SECRETARY The Assistant Secretary, if any, or, if there is more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

ARTICLE V
CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws or in the case of the Chief Executive Officer, Chief Operating Officer or Chief Financial Officer, within the agency power of such officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee
shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, the Chief Financial Officer, or any Vice President (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI
SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the Corporation by, the Chairman or Vice Chairman of the Board, or the President or Vice-President, and by the Secretary or an Assistant Secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.
Certificates for shares shall be of such form and device as the Board may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a summary statement or reference to the powers, designations, preferences or other special rights of such stock and the qualifications, limitations or restrictions of such preferences and/or rights, if any; a statement or summary of liens, if any; a conspicuous notice of restrictions upon transfer or registration of transfer, if any; a statement as to any applicable voting trust agreement; if the shares be assessable, or, if assessments are collectible by personal action, a plain statement of such facts.

A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct and in the case of mutilation, upon surrender of the mutilated certificate; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or
allotment of any rights, or entitled to exercise any rights in respect of any other change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If, in any case involving the determination of stockholders for any purpose other than notice of or voting at a meeting of stockholders, the Board shall not fix such a record date, the record date for determining stockholders for such purpose shall be the close of business on the day on which the Board shall adopt the resolution relating thereto. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 6.06 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or any Vice President and the Secretary or any Assistant Secretary of this Corporation are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

Section 6.07 SPECIAL DESIGNATION ON CERTIFICATES

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.
ARTICLE VII
INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws.
Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to “the Corporation” include 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 and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.
Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article VII.

Section 7.10 BROADEST LAWFUL INDEMNIFICATION. In addition to the foregoing, the Corporation shall, to the broadest and maximum extent permitted by Delaware law, as the same exists from time to time (but, in case of any amendment to or change in Delaware law, only to the extent that such amendment or change permits the Corporation to provide broader rights of indemnification than is permitted to the Corporation prior to such amendment or change), indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding. In addition, the Corporation shall, to the broadest and maximum extent permitted by Delaware law, as the same may exist from time to time (but, in case of any amendment to or change in Delaware law, only to the extent that such amendment or change permits the Corporation to provide broader rights of payment of expenses incurred in advance of the final disposition of an action, suit or proceeding than is permitted to the Corporation prior to such amendment or change), pay to such person any and all expenses (including attorneys’ fees) incurred in defending or settling any such action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined by a final judgment or other final adjudication that he is not entitled to be indemnified by the Corporation as authorized in this Section 7.10. The first sentence of this Section 7.10 to the contrary notwithstanding, the Corporation shall not indemnify any such person with respect to any of the following matters: (i) remuneration paid to such person if it shall be determined by a final judgment or other final adjudication that he was not entitled to be indemnified by the Corporation as authorized in this Section 7.10. The first sentence of this Section 7.10 to the contrary notwithstanding, the Corporation shall not indemnify any such person with respect to any of the following matters: (i) remuneration paid to such person if it shall be determined by a final judgment or other final adjudication that such remuneration was in violation of law; or (ii) any accounting of profits made from the purchase or sale by such person of the Corporation’s securities within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law; or (iii) actions brought about or contributed to by the dishonesty of such person, if a final judgment or other final adjudication adverse to such person establishes that acts of active and deliberate dishonesty were committed or attempted by such person with actual dishonest purpose and intent and were material to the adjudication; or (iv) actions based on or attributable to such person having gained any personal profit or advantage to which he was not entitled, in the event that a final judgment or other final adjudication adverse to such person establishes that such person in fact gained such personal profit or other advantage to which he was not entitled; or (v) any matter in respect of which a final decision by a court with competent jurisdiction shall determine that indemnification is unlawful; provided, however, that the Corporation shall perform its obligations under the second sentence of this Section 7.10 on behalf of such person until such time as it shall be ultimately determined by a final judgment or other
final adjudication that he is not entitled to be indemnified by the Corporation as authorized by the first sentence of this Section 7.10 by virtue of any of the preceding clauses (i), (ii), (iii), (iv) or (v).

Section 7.11 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.12 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

Section 7.13 AMENDMENTS. The foregoing provisions of this Article VII shall be deemed to constitute an agreement between the Corporation and each of the persons entitled to indemnification hereunder, for as long as such provisions remain in effect. Any amendment to the foregoing provisions of this Article VII which limits or otherwise adversely affects the scope of indemnification or rights of any such persons hereunder shall, as to such persons, apply only to claims arising, or causes of action based on actions or events occurring, after such amendment and delivery of notice of such amendment is given to the person or persons so affected. Until notice of such amendment is given to the person or persons whose rights hereunder are adversely affected, such amendment shall have no effect on such rights of such persons hereunder. Any person entitled to indemnification under the foregoing provisions of this Article VII shall, as to any act or omission occurring prior to the date of receipt of such notice, be entitled to indemnification to the same extent as had such provisions continued as Bylaws of the Corporation without such amendment.

ARTICLE VIII
RECORDS AND REPORTS

Section 8.01 MAINTENANCE OF RECORDS The Corporation shall, either, at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records of its business and properties.
Section 8.02 INSPECTION BY DIRECTORS Any director shall have the right to examine the Corporation’s stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director.

ARTICLE IX
MISCELLANEOUS

Section 9.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 9.02 WAIVER OF NOTICES Whenever notice is required to be given by these Bylaws or the Certificate of Incorporation or by law, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein, and such waiver shall be deemed equivalent to notice.

Section 9.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing contained in this Section 9.03 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

Section 9.04 GENDER All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 9.05 AMENDMENTS These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of a majority of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation’s Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.
The undersigned certifies:

(1) That the undersigned is duly elected and acting Secretary of autobytel.com inc., a Delaware corporation (the “Corporation”); and

(2) That the foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by the Board of Directors at a meeting held on September 13, 2000.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 13th day of September 2000.

/s/ Ariel Amir
Ariel Amir, Secretary

[SEAL]
AMENDMENT NO. 1

TO

AMENDED AND RESTATED BYLAWS

OF

AUTOBYTEL INC.

A DELAWARE CORPORATION
AMENDMENT NO. 1
TO
AMENDED AND RESTATED BYLAWS
OF
AUTOBYTEL INC.
A DELAWARE CORPORATION

Section 3.02 of Article III of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

“Section 3.02 NUMBER. The authorized number of directors of the Corporation shall be between six (6) members and fourteen (14) members until changed by an amendment of this Section 3.02. Directors need not be stockholders in the Corporation.”
The undersigned certifies:

(1) That the undersigned is duly elected and acting Secretary of Autobytel Inc., a Delaware corporation (the “Corporation”); and

(2) That the foregoing Amendment No. 1 to the Amended and Restated Bylaws was duly adopted by the Board of Directors at a meeting held on August 14, 2001.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 14th day of August 2001.

/s/ Ariel Amir
Ariel Amir, Secretary

[SEAL]
AMENDMENT NO. 2

TO

AMENDED AND RESTATED BYLAWS

OF

AUTOBYTEL INC.

A DELAWARE CORPORATION
Section 2.04 of Article II of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

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“Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Notice may be given (i) by delivering a typewritten or printed notice thereof to him or her personally, (ii) by depositing such notice in the United States mail or nationally recognized overnight courier, in a postage prepaid envelope, directed to him or her at his or her address furnished by him or her to the Secretary of the Corporation for such purpose or, if he or she shall not have furnished to the Secretary his or her address for such purpose, then at his or her address as it appears on the registrar of the Corporation, or (iii) subject to the prior consent of the stockholder to whom the notice is to be given, by email or other form of electronic transmission as permitted by Section 232 of the General Corporation Law of Delaware. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called (no business other than that specified in the notice may be transacted). The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees who, at the time of the notice, the Board intends to present for election.

An affidavit of the mailing or other means of giving any notice of any stockholders’ meeting, executed by the secretary, assistant secretary or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice.”

Section 3.09 of Article III of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

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“Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any three (3) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him or her a written notice of such meeting, charges prepaid, addressed to him or her at his or her address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; (ii) by orally communicating the time and place of the special meeting to him or her at least forty-eight (48) hours prior to the time of the holding of such meeting or (iii) via facsimile, email or other electronic transmission, transmitted to him or her at his or her facsimile number, email address or other electronic address as it is shown upon the records of the Corporation, at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director.

Whenever notice is required to be given, either to a stockholder or a director, under any provision of the General Corporation Law of Delaware, the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting, whether in person or by proxy, shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of directors or committee of directors need be specified in any written waiver of notice.

All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.”
CERTIFICATE OF SECRETARY

The undersigned certifies:

(1) That the undersigned is duly elected and acting Secretary of Autobytel Inc., a Delaware corporation (the “Corporation”); and

(2) That the foregoing Amendment No. 2 to the Amended and Restated Bylaws was duly adopted by the Board of Directors at a meeting held on April 23, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 23rd day of April 2002.

/s/ Ariel Amir
Ariel Amir, Secretary

[SEAL]
AMENDMENT NO. 3 TO
AMENDED AND RESTATED BYLAWS
OF AUTOBYTEL INC.

Section 3.03 of Article III of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

“Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Except as provided in Sections 3.04 and 3.05 of these Bylaws, at each annual meeting of stockholders, the successor nominee directors to the directors whose term will then expire will be elected to serve from the time of election and qualification until the third annual meeting following election.
Amendment No. 4
to
AMENDED AND RESTATED BYLAWS
of
Autobytel Inc.

Article VI of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as set forth on Exhibit A attached hereto.
ARTICLE VI
SHARES AND THEIR TRANSFER

Section 6.01 CAPITAL STOCK. The shares of the Corporation shall be represented by certificates or shall be uncertificated or a combination thereof, provided, however, that the provisions of these Bylaws as to uncertificated shares shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation to be re-issued as uncertificated shares. Notwithstanding the above, every holder of stock represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the Corporation by, the Chairman or Vice Chairman of the Board, or the President or Vice-President, and by the Secretary or an Assistant Secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Certificates for shares shall be of such form as the Board may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a summary statement or reference to the powers, designations, preferences or other special rights of such stock and the qualifications, limitations or restrictions of such preferences and/or rights, if any; a statement or summary of liens, if any; a conspicuous notice of restrictions upon transfer or registration of transfer, if any; a statement as to any applicable voting trust agreement; if the shares be assessable, or, if assessments are collectible by personal action, a plain statement of such facts.

In the case of uncertificated shares, except as otherwise determined by the Board, the Corporation shall, within a reasonable time after the issuance or transfer of uncertificated stock, send to the registered owner thereof a written notice setting forth the above. Notices to registered owners shall be in such form as the Board may designate.

A record shall be kept of the respective names of the persons, firms or corporations owning the stock of the Corporation, either represented by certificates or uncertificated, the number and class of shares respectively owned, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his, her or its attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and (i) in the case of certificated shares, upon surrender of the certificate or
Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificated and uncertificated shares of the Corporation and the issue of any notices or statements in connection with uncertificated shares. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock and all notices or statements in connection with uncertificated shares to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued, or book-entry for an uncertificated share may be entered, at the Corporation’s option, in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct and in the case of mutilation, upon surrender of the mutilated certificate; provided, however, that a new certificate may be issued, or book-entry for an uncertificated share may be entered, without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any other change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If, in any case involving the determination of stockholders for any purpose other than notice of or voting at a meeting of stockholders, the Board shall not fix such a record date, the record date for determining stockholders for such purpose shall be the close of business on the day on which the Board shall adopt the resolution relating thereto. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 6.06 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or any Vice President and the Secretary or any Assistant Secretary of the Corporation are authorized to vote, represent and exercise on behalf of the Corporation all rights incident to all shares of any other corporation or corporations standing in the name of the Corporation. The certificates for such shares properly endorsed and the payment of all taxes thereon, and (ii) in the case of uncertificated shares, upon receipt of proper instructions from the registered owner of the uncertificated shares and the Corporation’s satisfaction that the transfer complies with all applicable law including applicable tax laws. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer or when the proper instruction from the registered owner of the uncertificated shares for transfer shall be received by the Corporation, as the case may be, both the transferor and the transferee request the Corporation to do so.
authority herein granted to said officers to vote or represent on behalf of the Corporation any and all shares held by the Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

Section 6.07 SPECIAL DESIGNATION ON CERTIFICATES OR ON NOTICES TO REGISTERED OWNER

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then (i) in the case of certificated shares, the powers, the designations, the preferences, the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights, or (ii) in the case of uncertificated shares, except as otherwise determined by the Board, the Corporation shall, within a reasonable time after the issuance or transfer of uncertificated stock, send to the registered owner thereof a written notice setting forth the powers, the designations, the preferences, the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights which would otherwise have been required to be set forth or stated on the face or back of the share certificate, or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. The above can be set forth on the same notice as provided in Section 6.01 of these Bylaws.
AMENDMENT NO. 5
TO THE
AMENDED AND RESTATED BYLAWS
OF
AUTOBYTEL INC.
A DELAWARE CORPORATION

Section 3.02 of Article III of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

“Section 3.02 NUMBER. The authorized number of directors of the Corporation shall be between five (5) members and thirteen (13) members until changed by an amendment to this Section 3.02. Directors need not be stockholders of the Corporation.”
AMENDMENT NO. 6
TO THE
AMENDED AND RESTATED BYLAWS
OF
AUTOBYTEL INC.
A DELAWARE CORPORATION

Section 3.02 of Article III of the Amended and Restated Bylaws of Autobytel Inc. is hereby amended in its entirety to read as follows:

“Section 3.02 NUMBER. The authorized number of directors of the Corporation shall be between three (3) members and six (6) members until changed by an amendment to this Section 3.02. Directors need not be stockholders of the Corporation.”
Memo

DATE: March 1, 2009

TO: Mark Garms

FROM: Glenn Fuller – EVP, Chief Legal and Administrative Officer and Secretary

CC: Jeff Coats – President and CEO

RE: Promotion

It is a pleasure to inform you of your promotion to EVP and Chief Operating Officer at Autobytel Inc. In this position you will continue to report to Jeff Coats, President and CEO. Following is a summary of your promotion.

- **New Position:** EVP and Chief Operating Officer
- **Position Effective Date:** January 19, 2009
- **Semi-Monthly Rate:** $11,250 ($270,000 Approximate Annually)
- **Rate Effective Date:** March 1, 2009
- **Bonus Opportunity:** You shall be entitled to participate in annual incentive bonus plans, if any, that may be adopted by the Company from time to time and that are afforded generally to persons employed by the Company at your position level (subject to the terms and conditions of any such annual incentive bonus plans). Should such an annual incentive bonus plan be adopted for any annual period, your target annual incentive bonus opportunity will be as established by the Company for each annual period, which is anticipated to be up to 70% of your annualized salary (i.e., 12 x Base Monthly Salary) based on achievement of objectives specified by the Company each annual incentive bonus period (which may include Company-wide performance objectives, divisional or department performance objectives and/or individual performance objectives, allocated between and among such performance objectives as the Company may determine). Specific annual incentive bonus plan details target bonus opportunity and objectives for each annual bonus plan period will be set forth in written documents signed by the parties. You understand that the Company’s annual bonus plans, their structure and components, specific target bonus opportunities and objectives, and the achievement of objectives and payouts, if any, thereunder are subject to the sole discretion of the Company’s Board of Directors, or a committee thereof.

Please feel free to call if you have any questions.

Best regards,

Autobytel Inc.

/s/ Glenn E. Fuller
Glenn Fuller
EVP, Chief Legal and Administrative Officer and Secretary
**Memo**

**DATE:** Effective as of December 8, 2008  
**TO:** Mark Garms  
**FROM:** Glenn Fuller – EVP, Chief Legal and Administrative Officer and Secretary  
**CC:** Jeff Coats – President and CEO  
**RE:** Promotion

It is a pleasure to inform you of your promotion to SVP and Chief Operating Officer at Autobytel Inc. In this position you will report to Jeff Coats, President and CEO. Following is a summary of your promotion.

- **New Position:** SVP and Chief Operating Officer  
- **Effective Date:** December 8, 2008  
- **Bonus Opportunity:** To be determined by the Board of Directors at a later date.

Please feel free to call if you have any questions.

Best regards,

Autobytel Inc.

/s/ Glenn E. Fuller

Glenn Fuller
EVP, Chief Legal and Administrative Officer and Secretary
This Employment Agreement (the “Agreement”) is made and entered into, at Irvine, California, as of February 8, 2002, by and between Autobytel Inc., a corporation duly organized under the laws of the State of Delaware, with its principal offices at 18872 MacArthur Blvd., Second Floor, Irvine, California, 92612-1400, a Delaware corporation, (hereinafter, collectively referred to as the “Company”), and Mark Garms, domiciled at 1002 Glen Way, Atlanta GA 30319.

WHEREAS: Company desires to employ Mark Garms (hereinafter, sometimes referred to herein as “Employee”), as Director, Customer Experience for the Company.

WHEREAS: Employee desires to be so employed by the Company, subject to the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and with reference to the above recitals, the parties hereby agree as follows:

ARTICLE 1. TERM OF EMPLOYMENT

Section 1.1 The Company hereby employs Mark Garms as Director, Customer Experience, of the Company, on an “at-will” basis and Employee hereby accepts such employment by the Company, on such basis, commencing on March 4, 2002.

ARTICLE 2. DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.1 Employee shall be employed as a full time employee of the Company. In such capacity, Employee shall do and perform all services, acts, or things necessary or advisable as Director, Customer Experience of the Company, subject at all times to all present and future policies and requirements of the Company in connection with Company’s business. Employee shall perform all services required hereunder to the best of his/her ability.

ARTICLE 3. OBLIGATIONS OF THE COMPANY

Section 3.1 The Company shall provide Employee with the compensation, incentives, benefits, and business expense reimbursement specified elsewhere in this Agreement. Employee and the Company acknowledge that such compensation, incentives, benefits, and business expense reimbursement are commensurate with the duties and obligations required of Employee hereunder.
ARTICLE 4. COMPENSATION OF EMPLOYEE

Section 4.1 As compensation for services to be rendered by Employee pursuant to this Agreement, the Company hereby agrees to pay Employee a semi-monthly (twenty-four (24) pay periods per year) salary of $5,208.33 ($125,000.00 annually) payable at such times or on such dates that employees of the Company are regularly and customarily paid during a subsequent 12 month period.

Section 4.2 Additionally, Employee will be granted stock options under one of the Company’s Stock Option Plans to purchase 1,500 shares of the Company common stock at an exercise price equal to the closing price on the first trading day of the month following the date of hire or approval date, as determined by the Company. So long as you are employed by the Company or any subsidiary thereof, thirty-three and one third percent (33 1/3%) shall vest and become exercisable twelve (12) calendar months after the applicable vesting commencement date, and one thirty-sixth (1/36) shall vest and become exercisable at the end of each successive calendar month thereafter for the following twenty-four (24) months.

Section 4.3 The Company shall have the right to deduct or withhold from the compensation due to Employee hereunder any and all sums required for federal income and social security taxes and all state or local taxes now applicable or that may be enacted and become applicable during the term of your employment.

ARTICLE 5. EMPLOYEE BENEFITS

Section 5.1 The Company agrees that Employee shall be eligible to participate in the company’s group benefits package. The Company will pay for all or part of the premium costs based upon plan selection and dependents’ covered. Medical, dental and life insurance benefits are effective on the 1st of the month following 30 days of employment.

Section 5.2 Employee shall be eligible to participate in the Company’s 401(k) retirement savings plan on the first enrollment period following 90 days of employment. Enrollment in the Plan takes place on January 1st, April 1st, July 1st and October 1st of each year.

Section 5.3 Paid vacation is provided to all regular full-time Company personnel. Vacation is accrued monthly at a rate equal to two (2) weeks (80 hours) per year during the first five years of employment. After completing five (5) years of employment, employees will begin to accrue at a rate equal to three (3) weeks (120 hours) per year. Employees begin accruing vacation in the first month in which they have completed 120 hours of service. However, paid vacation may not be taken until an employee has completed six (6) months of service. Vacation taken prior to six (6) months will be
unpaid, and may only be taken with supervisor approval. Only accrued, but unused vacation will be paid out to employees in the event of termination.

Section 5.4 Regular full-time employees are eligible for up to six (6) days of paid sick time off per year. Employees who have been employed since January 1st will be eligible for the full six (6) days of paid sick time off. Employees hired after the first of the year will receive a pro-rated amount of time based upon their date of hire. Because sick time does not accrue, balances are not paid out to an employee in the event of termination.

ARTICLE 6. BUSINESS EXPENSES

Section 6.1 The Company shall pay or reimburse Employee for all reasonable and authorized business expenses incurred by Employee during the term of employment; such payment or reimbursement shall not be unreasonably withheld so long as said business expenses have been incurred for and promote the business of the Company and are normally and customarily incurred by employees in comparable positions at other comparable businesses in the same or similar market. Notwithstanding the above, the Company shall not pay or reimburse Employee for the costs of any membership fees or dues for private clubs, civic organizations, and similar organizations or entities, unless and until such organizations and the fees and costs associated therewith have been approved in writing by the Board of Directors of the Company.

Section 6.2 The Company shall reimburse Employee for business-related mileage at the reimbursement rate approved by the United States Internal Revenue Service, as such rate may change from time to time. Notwithstanding the foregoing, the Company shall not reimburse Employee for mileage traveled to the Company’s office from Employee’s residence, or from the Company’s office to Employee’s residence. Nothing contained in this Section 6.2 shall be construed as requiring the Company to reimburse Employee for the cost of gasoline for his/her motor vehicle.

Section 6.3 As a condition to reimbursement, Employee shall furnish to the Company adequate records and other documentary evidence required by federal and state statutes and regulations for the substantiation of each expenditure as an income tax deduction. Employee acknowledges and agrees that failure to furnish the required documentation may result in the Company denying all or part of the expense for which reimbursement is sought.
ARTICLE 7. TERMINATION OF EMPLOYMENT

The Company is an “At-Will” employer. You are free to terminate your employment with the Company at any time, with or without reason, and the Company has the right to terminate your employment at any time with or without reason. Although the Company may choose to terminate employment for cause, cause is not required. The “at-will” nature of employment cannot be changed except by a written agreement signed by the President and CEO of the Company and Employee.

ARTICLE 8. RESTRICTIVE COVENANTS

Section 8.1 Employee shall devote all or substantially all of his/her entire productive time, ability and attention to the business of the Company during the term of employment. Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, including, but not limited to, providing services to any business that is in competition with or similar in nature to the Company, whether for compensation or otherwise, without the prior written consent of the Company’s Board of Directors. However, the expenditure of reasonable amounts of time for educational, charitable, or professional activities shall not be deemed a breach of this Agreement, if those activities do not materially interfere with the services required under this Agreement, and shall not require the prior written consent of the Company’s Board of Directors. Notwithstanding anything herein contained to the contrary, this Agreement shall not be construed to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required hereunder.

Section 8.2 During the term of employment and following termination of this Agreement, Employee agrees that, without the Company’s prior written consent, he will not disclose to any person, firm, association, partnership, corporation or other entity, any information concerning: (a) the business operations or internal structure of the Company; (b) the customers of the Company; (c) the financial condition of the Company; and (d) other confidential information pertaining to the Company, including without limitation, trade secrets, technical data, marketing analyses and studies, operating procedures, customer and/or inventor lists, or the existence or nature of any of the Company’s agreements; provided, however, that Employee shall be entitled to disclose such information: (i) to the extent the same shall have otherwise become publicly available (unless made publicly available by Employee); or (ii) during the course of or in connection with any litigation, arbitration, or other proceeding based upon or in connection with the subject matter of this Agreement.
Section 8.3 Either party may request temporary or preliminary injunctive relief in accordance with applicable law.

Section 8.4 As used in this Article 8, the term Company shall include all affiliated entities of the Company, including without limitation, corporations, partnerships and limited liability companies.

ARTICLE 9. GENERAL PROVISIONS

Section 9.1 This document contains the entire agreement between the parties with respect to the subject matter hereof.

Section 9.2 No waiver, by conduct or otherwise, by any party of any term, provision, or condition of this Agreement, shall be deemed or construed as a further or continuing waiver of any such term, provision, or condition.

Section 9.3 No modification, waiver, amendment, discharge or change of this Agreement, shall be valid unless the same is in writing and signed by the party against whom enforcement of such modification, waiver, amendment, discharge, or change is sought.

Section 9.4 Except as hereinafter provided, all claims, disputes and other matters in question between the parties hereto arising out of, or relating to this Agreement or the breach thereof, shall be resolved solely by mediation and arbitration in accordance with the provisions of this Section 9.4.

9.4.1 With respect to any dispute between the parties, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written request for non-binding mediation, which shall specify in detail the facts of this dispute, and within ten (10) business days, from the date of delivery of the demand, the matter shall be submitted to a mediator mutually agreeable to the parties (the “Mediator”) in Irvine, California. The party who did not initiate the mediation may submit a statement of facts to the Mediator, and provide a copy to the other party within five (5) business days of the mediation hearing. The mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Pursuant to Evidence Code Section 1152.5(c) the parties agree: (i) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any arbitration proceeding or civil action in which, pursuant to law,
testimony can be compelled to be given; (ii) Unless the document otherwise provides, no document prepared for the purpose of, or in the
course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be
compelled, in any arbitration proceeding or civil action in which, pursuant to law, testimony can be compelled to be given; and (iii) The
Mediator’s fee shall be paid by the Company. If the dispute has not been resolved, the matter shall then be submitted to arbitration in
accordance with section 9.4.2

9.4.2 Any dispute between the parties that is to be resolved by arbitration as provided in Section 9.4.1 shall be conducted pursuant to the
provisions of California Code of Civil Procedure Sections 1280 through 1287.6, except as provided below. Any such arbitration shall be
held and conducted in Irvine, California, and shall be conducted by a sole arbitrator mutually selected by the parties. If the parties cannot
agree on a sole arbitrator within ten (10) business days from the first request for arbitration, each party shall each select one arbitrator and
the two (2) selected arbitrators shall select the third arbitrator. The parties further agree: (i) Any request for arbitration shall be in writing
and must be made within a reasonable time after the claim, dispute or other matter in question has arisen; provided, however, that in no
event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim,
dispute, or other matter would be barred by the applicable statute of limitations; (ii) The arbitrator or arbitrators appointed must be former
or retired judges or attorneys at law with at least ten (10) years experience in employment, financing, and other matters; (iii) All
proceedings involving the parties shall be reported by a certified shorthand court reporter and written transcripts of the proceedings shall
be prepared and made available to the parties; (iv) The arbitrator or arbitrators shall prepare in writing and provide to the parties an award
together with the reasons upon which the award of the arbitrators is based; (v) The final award by the arbitrator or arbitrators must be
made within ninety (90) days from the date the arbitration proceedings are initiated; (vi) The prevailing party shall be awarded his/its
reasonable attorney’s fees if the claim is for breach of contract. If the claim is based on statute or tortious conduct, the prevailing party
shall be awarded his/its reasonable attorney’s fees in accordance with the terms of the applicable statute or common law, and/or as
interpreted by judicial decisions. In addition, the prevailing party shall be entitled to his/its reasonable costs of suit in accordance
with the provisions for recovery of costs in court litigation contained in the California Code of Civil Procedure; and (vii) The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

NOTICE: BY INITIALING IN THE SPACE BELOW THE PARTIES ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND THE PARTIES ARE GIVING UP ANY RIGHTS THE PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW THE PARTIES ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE PROVISIONS OF THIS SECTION. IF THE PARTIES REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE PARTIES MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THEIR AGREEMENT TO THE ARBITRATION PROVISION IS VOLUNTARY.

THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION TO NEUTRAL ARBITRATION.

Company Initials

Employee’s Initials

Section 9.5 The rights under this Agreement, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. No failure by any party to exercise, and no delay in exercising, any rights shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by any party preclude any other or future exercise thereof or the exercise of any other right.

Section 9.6 Except as otherwise provided in this Agreement, any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any person in connection with this Agreement shall be in writing. Such notice shall be personally served, sent by facsimile, reputable courier or sent prepaid by registered or certified mail with return receipt requested and shall be deemed given (i) if personally served, when delivered to the person to whom such notice is addressed, (ii) if given by facsimile, confirmed in accordance with the records of the facsimile machine through which the notice is sent, (iii) if sent by reputable courier, when received by the party to which it is sent as reflected on the courier’s receipt and records, or (iv) if given by mail, two (2) business days following deposit in the United States mail. Such notices shall be
addressed to the party to whom such notice is to be given at the party’s address set forth below or as such party shall otherwise direct.

If to the Company, to:  
Autobytel Inc.  
18872 MacArthur Blvd., Second Floor  
Irvine, California 92612-1400  
Attn.: General Counsel

If to Employee:  
Mark Garms  
1002 Glen Way  
Atlanta, GA 30319

Section 9.7 The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 9.8 This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 9.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

Section 9.10 The provisions of this Agreement are agreed to be severable, and if any provision, or application thereof, is held invalid or unenforceable, then such holding shall not affect any other provision or application.

Section 9.11 As used herein, and as the circumstances require, the plural term shall include the singular, the singular shall include the plural, the neuter term shall include the masculine and feminine genders, and the feminine term shall include the neuter and the masculine genders.

Section 9.12 Each party hereto shall pay its or their own expenses incident to the negotiation, preparation and consummation of this Agreement, including all fees and expenses of its or their respective counsel.

ARTICLE 10. EMPLOYEE CONFIDENTIALITY AGREEMENT

As a further condition of his/her employment by Company, Employee agrees to execute an “Employee Confidentiality Agreement”.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Autobytel Inc.                                      Employee:

By:  /s/ Andrew Donchak  /s/ Mark Garms

Andrew Donchak, S.V.P., Chief Marketing Officer    Mark Garms
Memo

DATE: March 1, 2009
TO: Glenn Fuller
FROM: Jeff Coats – President and CEO
RE: Promotion

It is a pleasure to inform you of your promotion to EVP, Chief Legal and Administrative Officer and Secretary at Autobytel Inc. In this position you will continue to report to Jeff Coats, President and CEO. Following is a summary of your promotion.

New Position: EVP, Chief Legal and Administrative Officer and Secretary
Position Effective Date: January 19, 2009
Semi-Monthly Rate: $10,625 ($255,000 Approximate Annually)
Rate Effective Date: March 1, 2009
Bonus Opportunity: You shall be entitled to participate in annual incentive bonus plans, if any, that may be adopted by the Company from time to time that are afforded generally to persons employed by the Company at your position level (subject to the terms and conditions of any such annual incentive bonus plans). Should such an annual incentive bonus plan be adopted for any annual period, your target annual incentive bonus opportunity will be as established by the Company for each annual period, which is anticipated to be up to 70% of your annualized salary (i.e., 12 x Base Monthly Salary) based on achievement of objectives specified by the Company each annual incentive bonus period (which may include Company-wide performance objectives, divisional or department performance objectives and/or individual performance objectives, allocated between and among such performance objectives as the Company may determine). Specific annual incentive bonus plan details target bonus opportunity and objectives for each annual bonus plan period will be set forth in written documents signed by the parties. You understand that the Company’s annual bonus plans, their structure and components, specific target bonus opportunities and objectives, and the achievement of objectives and payouts, if any, thereunder are subject to the sole discretion of the Company’s Board of Directors, or a committee thereof.

Please feel free to call if you have any questions.

Best regards,
Autobytel Inc.

/s/ Jeff Coats

Jeff Coats
President and CEO
**Memo**

**DATE:**  
**Effective as of December 8, 2008**

**TO:**  
Glenn Fuller

**FROM:**  
Jeff Coats – President and CEO

**RE:**  
Promotion

It is a pleasure to inform you of your promotion to SVP, Chief Legal and Administrative Officer and Secretary at Autobytel Inc. In this position you will report to Jeff Coats, President and CEO. Following is a summary of your promotion.

- **New Position:** SVP, Chief Legal and Administrative Officer and Secretary
- **Effective Date:** December 8, 2008
- **Bonus Opportunity:** To be determined by the Board of Directors at a later date

Please feel free to call if you have any questions.

Best regards,

**Autobytel Inc.**

/s/ Jeff Coats

Jeff Coats  
President and CEO
Memo

DATE: April 18, 2008

TO: Glenn Fuller
FROM: James Riesenbach, President & CEO
CC: Lorna Larson, VP Human Resources

RE: Promotion

It is a pleasure to inform you of your promotion to Senior Vice President, Chief Legal Officer & Secretary at Autobytel Inc. In this position you will report to Jim Riesenbach. Following is a summary of your promotion.

New Position: Senior Vice President, Chief Legal Officer & Secretary
Semi-Monthly Rate: $9,583.34 ($230,000 Annually)
Effective Date: April 28, 2008
Bonus Opportunity: Target bonus opportunity up to 45%, based on achievement of specified objectives. Specific objectives and plan details to be outlined in a separate document and incorporated herein by reference. Bonus will be prorated based upon the effective date of your promotion.
Stock Options: 75,000 subject to board approval and applicable securities laws

Please feel free to call if you have any questions.

Best regards,

/s/ James Riesenbach

James Riesenbach
President & CEO
Dear Glenn:

It is a pleasure to offer you the position of Vice President, Legal Affairs at Autobytel Inc. Please be reminded that our offer of employment is contingent upon completion of our background check and your reviewing and accepting the terms of our various pre-hire and new-hire documents, including the employee handbook, the Confidentiality Agreement, the Arbitration Agreement, the Securities Trading Policy, and the Code of Conduct and Ethics for Employees, Officers and Directors. Following is a summary of our offer:

- **Position:** Vice President, Legal Affairs
- **Semi-Monthly Rate:** $7,708.34 ($185,000.00 Annually)
- **Hire Date:** October 16, 2006
- **Stock Options:** 75,000 subject to board approval and applicable securities laws
- **Bonus Opportunity:** Target bonus opportunity is up to 35%, on an annual basis based on achievement of specified objectives. Specific objectives and plan details to be outlined in a separate document and incorporated herein by reference. Bonus will be prorated based upon actual time worked within the first year of employment.
- **Vacation Accrual:** three (3) weeks per year
- **Severance:** You will be eligible for a six (6) month severance plan provided you do not resign or are terminated for cause in accordance with the terms approved by the board. Detailed plan will be outlined in a separate document.

As a condition of employment, you will be required to sign the standard Employee Confidentiality Agreement and the Arbitration Agreement, which will apply during your employment with the Company and thereafter. Two originals of each of these agreements are enclosed for your review. Upon acceptance of this offer of employment, please sign and/or date in the designated areas, and return two signed originals of each directly to me. Ariel Amir, Autobytel Inc.’s EVP, Chief Legal and Administrative Officer, will then sign and return one complete package to you for your records.

Enclosed you will also find information regarding our benefits package. Please review the information, fill out as much as possible, and bring it with you on your first day of employment. If you have any questions or concerns they will be addressed during your new hire orientation or you may contact Michelle Knauerhaze at 949-862-1322.

This offer of employment is contingent on your ability to comply with all applicable State and Federal regulations, including without limitation requirements, relating to the I-9 employment authorization verification process. A list of acceptable documents is enclosed. Please bring documents to verify employment eligibility on your first day of work.
The provisions of this letter are severable which means that if any part of the letter is legally unenforceable, the other provisions shall remain fully valid and enforceable. This letter sets forth our complete understanding regarding the matters addressed herein and supersedes all previous agreements or understandings between you and the Company, whether written or oral.

Glenn, while we sincerely hope your employment relationship with Autobytel Inc. will be mutually rewarding, we want to be clear that by our policy, your employment is “at will” and there is no express or implied contract of employment for a specified period of time. This means that you may resign at any time without notice and that Autobytel Inc. may terminate your employment or change the terms of your employment, including but not limited to your duties, position, or compensation, at any time without cause and without notice. Our at-will employment policy may not be changed except by an explicit written agreement signed by both you and the President and CEO of Autobytel Inc. This policy supersedes any prior written or oral communications to the contrary.

In addition, Autobytel requires that you comply with all terms of any employment agreement that you may have with your current or former employer, Freedom Communications, Inc. Specifically, Autobytel expects that you will comply with any notification requirements of any agreement with Freedom Communications, Inc., and Autobytel will adjust your start date accordingly to accommodate any required notice period.

Autobytel further expects that you will comply with any confidentiality provisions of any agreement with Freedom Communications, Inc.. Moreover, and regardless of whether you have a written agreement with Freedom Communications, Inc., Autobytel does not want you to disclose to us or provide copies of any confidential, proprietary, or trade secret information from Freedom Communications, Inc.

This offer shall expire 7 days from date of issue. Please indicate acceptance of our offer by signing and returning the enclosed copy of this letter. By signing this offer letter you also will be acknowledging that you are not relying on any promises or representations other than those set forth above in deciding to accept this conditional offer of employment. You may fax a signed copy, if you wish, to our confidential fax at (949) 862-1324. Feel free to call if you have questions. We look forward to having you join the Autobytel Inc. team.

/s/ Glenn Fuller
Glenn Fuller

Best regards,

Autobytel Inc.

/s/ Lorna Larson
Lorna Larson
V.P., Human Resources
Memo

DATE: March 1, 2009
TO: Curt Dewalt
FROM: Glenn Fuller – EVP, Chief Legal and Administrative Officer and Secretary
CC: Jeff Coats – President and CEO
RE: Promotion

It is a pleasure to inform you of your promotion to SVP and Chief Financial Officer at Autobytel Inc. In this position you will continue to report to Jeff Coats, President and CEO. Following is a summary of your promotion.

New Position: SVP and Chief Financial Officer
Semi-Monthly Rate: $10,416.67 ($250,000 Approximate Annually)
Effective Date: March 1, 2009
Bonus Opportunity: You shall be entitled to participate in annual incentive bonus plans, if any, that may be adopted by the Company from time to time and that are afforded generally to persons employed by the Company at your position level (subject to the terms and conditions of any such annual incentive bonus plans). Should such an annual incentive bonus plan be adopted for any annual period, your target annual incentive bonus opportunity will be as established by the Company for each annual period, which is anticipated to be up to 55% of your annualized salary (i.e., 12 x Base Monthly Salary) based on achievement of objectives specified by the Company each annual incentive bonus period (which may include Company-wide performance objectives, divisional or department performance objectives and/or individual performance objectives, allocated between and among such performance objectives as the Company may determine). Specific annual incentive bonus plan details target bonus opportunity and objectives for each annual bonus plan period will be set forth in written documents signed by the parties. You understand that the Company’s annual bonus plans, their structure and components, specific target bonus opportunities and objectives, and the achievement of objectives and payouts, if any, thereunder are subject to the sole discretion of the Company’s Board of Directors, or a committee thereof.

Please feel free to call if you have any questions.

Best regards,

/s/ Glenn E. Fuller

Glenn Fuller
EVP, Chief Legal and Administrative Officer and Secretary
Memo

DATE: Effective as of December 8, 2008
TO: Curt Dewalt
FROM: Glenn Fuller – EVP, Chief Legal and Administrative Officer and Secretary
CC: Jeff Coats – President and CEO
RE: Promotion

It is a pleasure to inform you of your promotion to SVP, Finance and Controller at Autobytel Inc. In this position you will report to Jeff Coats, President and CEO. Following is a summary of your promotion.

- New Position: SVP, Finance and Controller
- Effective Date: December 8, 2008
- Bonus Opportunity: To be determined by the Board of Directors at a later date.

Please feel free to call if you have any questions.

Best regards,

/s/ Glenn Fuller

Glenn Fuller
EVP, Chief Legal and Administrative Officer and Secretary
Dear Curtis:

It is a pleasure to offer you the position of VP, Finance at Autobytel Inc. Please be reminded that our offer of employment is contingent upon completion of board approval, background check and your reviewing and accepting the terms of our various pre-hire and new-hire documents, including the employee handbook, the Confidentiality Agreement, the Arbitration Agreement, the Securities Trading Policy, and the Code of Conduct and Ethics for Employees, Officers and Directors. Following is a summary of our offer:

<table>
<thead>
<tr>
<th>Position</th>
<th>VP, Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semi-Monthly Rate</td>
<td>$8,333.34 ($200,000 Annually)</td>
</tr>
<tr>
<td>Hire Date</td>
<td>October 30, 2007</td>
</tr>
<tr>
<td>Stock Options</td>
<td>140,000 subject to board approval and applicable securities laws</td>
</tr>
<tr>
<td>Bonus Opportunity</td>
<td>Target bonus opportunity is up to 35%, on an annual basis based on achievement of specified objectives. Specific objectives and plan details to be outlined in a separate document and incorporated herein by reference. Bonus will be prorated based upon actual time worked within the first year of employment.</td>
</tr>
<tr>
<td>Signing Bonus</td>
<td>$25,000 payable with the first payroll cycle</td>
</tr>
<tr>
<td>Vacation</td>
<td>Annual accrual of 3 weeks per year</td>
</tr>
</tbody>
</table>

As a condition of employment, you will be required to sign the standard Employee Confidentiality Agreement and the Arbitration Agreement, which will apply during your employment with the Company and thereafter. Two originals of each of these agreements are enclosed for your review. Upon acceptance of this offer of employment, please sign and/or date in the designated areas, and return two signed originals of each directly to me. Lorna Larson, Autobytel Inc.’s VP, Human Resources, will then sign and return one complete package to you for your records upon your hire date.

Enclosed you will also find information regarding our benefits package and other new hire paperwork. Please review the information, complete as much as possible, and bring it with you on your first day of employment. If you have any questions or concerns they will be addressed during your new hire orientation or you may contact Susanna Larson at (949)862-1312.

This offer of employment is contingent on your ability to comply with all applicable State and Federal regulations, including without limitation requirements, relating to the I-9 employment authorization verification process. A list of acceptable documents is enclosed. Please bring documents to verify employment eligibility on your first day of work.
The provisions of this letter are severable which means that if any part of the letter is legally unenforceable, the other provisions shall remain fully valid and enforceable. This letter sets forth our complete understanding regarding the matters addressed herein and supersedes all previous agreements or understandings between you and the Company, whether written or oral.

Curtis, while we sincerely hope your employment relationship with Autobytel Inc. will be mutually rewarding, we want to be clear that by our policy, your employment is “at will” and there is no express or implied contract of employment for a specified period of time. This means that you may resign at any time without notice and that Autobytel Inc. may terminate your employment or change the terms of your employment, including but not limited to your duties, position, or compensation, at any time without cause and without notice. Our at-will employment policy may not be changed except by an explicit written agreement signed by both you and the President and CEO of Autobytel Inc. This policy supersedes any prior written or oral communications to the contrary.

In addition, Autobytel requires that you comply with all terms of any employment agreement that you may have with your current or former employer, Roth Staffing Companies, Inc. Specifically, Autobytel expects that you will comply with any notification requirements of any agreement with Roth Staffing Companies, Inc., and Autobytel will adjust your start date accordingly to accommodate any required notice period.

Autobytel further expects that you will comply with any confidentiality provisions of any agreement with Roth Staffing Companies, Inc. Moreover, and regardless of whether you have a written agreement with Roth Staffing Companies, Inc., Autobytel does not want you to disclose to us or provide copies of any confidential, proprietary, or trade secret information from Roth Staffing Companies, Inc.

This offer shall expire 3 days from date of issue. Please indicate acceptance of our offer by signing and returning the enclosed copy of this letter. By signing this offer letter you also will be acknowledging that you are not relying on any promises or representations other than those set forth above in deciding to accept this conditional offer of employment. You may fax a signed copy, if you wish, to our confidential fax at (949) 797-0532. Feel free to call if you have questions. We look forward to having you join the Autobytel Inc. team.

/s/ Curtis DeWalt
Curtis DeWalt

Best regards,

Autobytel Inc.

/s/ Lorna Larson
Lorna Larson
VP, Human Resources
Memo

DATE: March 1, 2009
TO: Wes Ozima
FROM: Glenn Fuller – EVP, Chief Legal and Administrative Officer and Secretary
CC: Curt Dewalt – SVP and Chief Financial Officer
RE: Promotion

It is a pleasure to inform you of your promotion to VP and Controller at Autobytel Inc. In this position you will continue to report to Curt Dewalt, SVP and Chief Financial Officer. Following is a summary of your promotion.

New Position: VP and Controller
Semi-Monthly Rate: $7,291.67 ($175,000 Approximate Annually)
Effective Date: March 1, 2009
Bonus Opportunity: You shall be entitled to participate in annual incentive bonus plans, if any, that may be adopted by the Company from time to time and that are afforded generally to persons employed by the Company at your position level (subject to the terms and conditions of any such annual incentive bonus plans). Should such an annual incentive bonus plan be adopted for any annual period, your target annual incentive bonus opportunity will be as established by the Company for each annual period, which is anticipated to be up to 35% of your annualized salary (i.e., 12 x Base Monthly Salary) based on achievement of objectives specified by the Company each annual incentive bonus period (which may include Company-wide performance objectives, divisional or department performance objectives and/or individual performance objectives, allocated between and among such performance objectives as the Company may determine). Specific annual incentive bonus plan details target bonus opportunity and objectives for each annual bonus plan period will be set forth in written documents signed by the parties. You understand that the Company’s annual bonus plans, their structure and components, specific target bonus opportunities and objectives, and the achievement of objectives and payouts, if any, thereunder are subject to the sole discretion of the Company’s Board of Directors, or a committee thereof.

Please feel free to call if you have any questions.

Best regards,

/s/ Glenn E. Fuller

Glenn Fuller
EVP, Chief Legal and Administrative Officer and Secretary
August 6, 2004

Wesley Ozima
9 Foxcrest
Irvine, CA 92620

Dear Wesley:

It is a pleasure to offer you the position of Director, Internal Audit at Autobytel Inc. Please be reminded that our offer of employment is contingent upon completion of our background check and your reviewing and accepting the terms of our various pre-hire and new-hire documents, including the employee handbook, the Confidentiality Agreement, the Arbitration Agreement, the Securities Trading Policy, and the Code of Conduct and Ethics for Employees, Officers and Directors. Following is a summary of our offer:

<table>
<thead>
<tr>
<th>Position</th>
<th>Director, Internal Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semi-Monthly Rate</td>
<td>$5000.00 ($120,000.00 Annually)</td>
</tr>
<tr>
<td>Hire Date</td>
<td>August 23, 2004</td>
</tr>
<tr>
<td>Stock Options</td>
<td>20,000 subject to board approval</td>
</tr>
<tr>
<td>Bonus Opportunity</td>
<td>Target bonus opportunity is up to 20%, on an annual basis based on achievement of specified objectives. Specific objectives and plan details to be outlined in a separate document and incorporated herein by reference. Bonus will be prorated based upon actual time worked within the first year of employment.</td>
</tr>
</tbody>
</table>

As a condition of employment, you will be required to sign the standard Employee Confidentiality Agreement and the Arbitration Agreement, which will apply during your employment with the Company and thereafter. Two originals of each of these agreements are enclosed for your review. Upon acceptance of this offer of employment, please sign and/or date in the designated areas, and return two signed originals of each directly to me. Hoshi Printer, Autobytel Inc.’s E.V.P., Chief Financial Officer, will then sign and return one complete package to you for your records.

Enclosed you will also find information regarding our benefits package. Please review the information, fill out as much as possible, and bring it with you on your first day of employment. If you have any questions or concerns they will be addressed during your new hire orientation or you may contact Terry Brennan at (949) 862-3058.

The Immigration Reform and Control Act of 1986 requires all new associates to provide proof of citizenship and/or right to work documentation within three (3) days from the commencement of employment. A list of acceptable documents is enclosed. Please bring documents to verify employment eligibility on your first day of work.
The provisions of this letter are severable which means that if any part of the letter is legally unenforceable, the other provisions shall remain fully valid and enforceable. This letter sets forth our complete understanding regarding the matters addressed herein and supersedes all previous agreements or understandings between you and the Company, whether written or oral.

Wesley, while we sincerely hope your employment relationship with Autobytel Inc., will be mutually rewarding, we want to be clear that by our policy, your employment is “at will” and there is no express or implied contract of employment for a specified period of time. This means that you may resign at any time without notice and that Autobytel Inc., may terminate your employment or change the terms of your employment, including but not limited to your duties, position, or compensation, at any time without cause and without notice. Our at-will employment policy may not be changed except by an explicit written agreement signed by both you and the President and CEO of Autobytel Inc. This policy supersedes any prior written or oral communications to the contrary.

In addition, Autobytel requires that you comply with all terms of any employment agreement that you may have with your current or former employer, Volt Information Sciences, Inc. Specifically, Autobytel expects that you will comply with any notification requirements of any agreement with Volt Information Sciences, Inc., and Autobytel will adjust your start date accordingly to accommodate any required notice period.

Autobytel further expects that you will comply with any confidentiality provisions of any agreement with Volt Information Sciences, Inc. Moreover, and regardless of whether you have a written agreement with Volt Information Sciences, Inc., Autobytel does not want you to disclose to us or provide copies of any confidential, proprietary or trade secret information from Volt Information Sciences, Inc.

This offer shall expire 7 days from date of issue. Please indicate acceptance of our offer by signing and returning the enclosed copy of this letter. By signing this offer letter you also will be acknowledging that you are not relying on any promises or representations other than those set forth above in deciding to accept this conditional offer of employment. You may fax a signed copy, if you wish, to our confidential fax at (949) 862-1324. Feel free to call if you have questions. We look forward to having you join the Autobytel Inc., team.

/s/ Wesley Ozima
Wesley Ozima

Best regards,

Autobytel Inc.

/s/ Mark Ernst
Mark Ernst
V.P., Human Resources

Autobytel Inc.
This Amended and Restated Severance Agreement ("Agreement") is entered into as of November 15, 2008 ("Effective Date") between Autobytel Inc., a Delaware corporation ("Autobytel" or "Company") and Wesley Ozima ("Employee").

Background

Autobytel has determined that it is in its best interests to encourage Employee’s continued employment with, and dedication to the business of, Autobytel, and as a result thereof, Autobytel and Employee have previously entered into a Severance Agreement dated as of September 29, 2008 ("Prior Severance Agreement"). In light of Autobytel’s financial condition, recent reductions in force and evaluation of various strategic alternatives, which may include a Change of Control of Autobytel, Autobytel has determined that it is in the Company’s best interests to amend the Prior Severance Agreement to provide for additional incentive to encourage Employee’s continued employment with Autobytel and dedication to Autobytel’s business.

In consideration of the foregoing and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. For purposes of this Agreement, the terms below that begin with initial capital letters within this Agreement shall have the specially defined meanings set forth below (unless the context clearly indicates a different meaning).

   (a) "409A Suspension Period" shall have the meaning set forth in Section 4.

   (b) "Arbitration Agreement" means that certain Mutual Agreement to Arbitrate dated as of August 9, 2004 by and between Autobytel and Employee.

   (c) "Benefits" means all Company medical, dental, vision, life and disability plans in which Employee participates.

   (d) "Cause" shall mean the termination of the Employee’s employment by Company as a result of any one or more of the following:

      (i) any conviction of, or pleading of nolo contendere by, the Employee for any felony;

      (ii) any willful misconduct of the Employee which has a materially injurious effect on the business or reputation of the Company;
(iii) the gross dishonesty of the Employee in any way that adversely affects the Company; or

(iv) a material failure to consistently discharge Employee’s employment duties to the Company which failure continues for thirty (30) days following written notice from the Company detailing the area or areas of such failure, other than such failure resulting from Employee’s Disability.

For purposes of this definition of Cause, no act or failure to act, on the part of the Employee, shall be considered “willful” if it is done, or omitted to be done, by the Employee in good faith or with reasonable belief that Employee’s action or omission was in the best interest of the Company. Employee shall have the opportunity to cure any such acts or omissions (other than clauses (i) and (iii) above) within thirty (30) days of the Employee’s receipt of a written notice from the Company finding that, in the good faith opinion of the Company, the Employee is guilty of acts or omissions constituting “Cause.”

(e) “Change of Control” shall have the meaning ascribed to such term in the Company’s Amended and Restated 2001 Restricted Stock and Option Plan as such definition exists as of the Effective Date.

(f) “COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act, as amended, and the rules and regulations promulgated thereunder.

(g) “Code” shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

(h) “Company” means Autobytel, and upon any assignment to and assumption of this Agreement by any Successor Company, shall mean such Successor Company.

(i) “Disability” shall mean the inability of the Employee to perform Employee’s duties to the Company on account of physical or mental illness or incapacity for a period of one-hundred twenty (120) consecutive calendar days, or for a period of one hundred eighty (180) calendar days, whether or not consecutive, during any three hundred sixty-five (365) day period.

(j) “Excise Tax” shall have the meaning set forth in Section 3(a)(i).

(k) “Employee’s Position” means Employee’s position as the Director, Financial Reporting of the Company.

(l) “Employee’s Current Primary Office Location” means Autobytel’s headquarters located at 18872 MacArthur Boulevard, Irvine, California, 92612-1400.

(m) “Good Reason” means any act, decision or omission by the Company that: (A) materially modifies, reduces, changes, or restricts Employee’s salary as in existence as of the date hereof or as of the date prior to any such change, whichever is more beneficial for Employee at the time of the act, decision, or omission by the Company; (B) materially modifies, reduces, changes, or restricts the Employee’s Benefits as a whole as in
existence as of the date hereof or as of the date prior to any such change, whichever are more beneficial for Employee at the time of the act, decision, or omission by the Company; (C) materially modifies, reduces, changes, or restricts the Employee’s authority, duties, or responsibilities commensurate with the Employee’s Position but excluding the effects of any reductions in force other than the Employee’s own termination; (D) results in a Relocation Event; (E) constitutes a failure or refusal by any Company Successor to assume this Agreement; or (F) involves or results in any material failure by the Company to comply with any provision of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of written notice thereof given by the Employee. Notwithstanding the foregoing, no event shall constitute “Good Reason” unless (i) the Employee first provides written notice to the Company within ninety (90) days of the event(s) alleged to constitute good reason, with such notice specifying the grounds that are alleged to constitute good reason, and (ii) the Company fails to cure such a material breach to the reasonable satisfaction of the Employee within thirty (30) days after Company’s receipt of such written notice.

(n) “Gross-Up Payment” shall have the meaning set forth in Section 3(a)(i).

(o) “Payment” shall have the meaning set forth in Section 3(a)(i).

(p) “Relocation Event” a Company-required relocation of Employee’s primary office location to a primary office location in excess of a forty (40) mile radius from the Employee’s Current Primary Office Location.

(q) “Separation from Service” or “Separates from Service” shall mean Employee’s termination of employment, as determined in accordance with Treas. Reg. § 1.409A-1(h). Employee shall be considered to have experienced a termination of employment when the facts and circumstances indicate that Employee and the Company reasonably anticipate that either (i) no further services will be performed for the Company after a certain date, or (ii) that the level of bona fide services Employee will perform for the Company after such date (whether as an employee or as an independent contractor) will permanently decrease to no more than twenty percent (20%) of the average level of bona fide services performed by Employee (whether as an employee or independent contractor) over the immediately preceding thirty-six (36) month period (or the full period of services to the Company if Employee has been providing services to the Company for less than thirty six (36) months). If Employee is on military leave, sick leave, or other bona fide leave of absence, the employment relationship between Employee and the Company shall be treated as continuing intact, provided that the period of such leave does not exceed six months, or if longer, so long as Employee retains a right to reemployment with the Company under an applicable statute or by contract. If the period of a military leave, sick leave, or other bona fide leave of absence exceeds six months and Employee does not retain a right to reemployment under an applicable statute or by contract, the employment relationship shall be considered to be terminated for purposes of this Agreement as of the first day immediately following the end of such six-month period. In applying the provisions of this paragraph, a leave of absence shall be considered a bona fide leave of absence only if there is a reasonable expectation that Employee will return to perform services for the Company. For purposes of determining whether Employee has incurred a Separation from Service, the
Company shall include the Company and any entity that would be considered a single employer with the Company under Code Section 414(b) or 414(c).

(r) “Severance Period” shall have the meaning set forth in Section 2(a).

(s) “Successor Company” means any successor to Autobytel or its assets by reason of any Change of Control.

(t) “Termination Without Cause” means termination of Employee’s employment with the Company (i) by the Company (a) for any reason other than (1) death, (2) Disability or (3) those reasons expressly set forth in the definition of “Cause”, (b) for no reason at all, or (c) in connection with or as a result of a Change of Control; or (ii) by Employee for Good Reason within ninety (90) days following the initial existence of the event or events that constitute Good Reason; provided, however, that a termination of Employee’s employment with the Company in connection with a Change of Control shall not constitute a Termination Without Cause if Employee is offered employment with the Successor Company under terms and conditions, including position, salary and other compensation, and benefits, that would not provide Employee the right to terminate Employee’s employment for Good Reason.

2. Severance Benefits and Conditions

   (a) In the event of (i) Termination Without Cause by the Company, or (ii) the termination of Employee’s employment with the Company by Employee for Good Reason within thirty (30) days of the earlier of (i) the expiration of the Company’s thirty-day right to cure as set forth in the definition of Good Reason, or (ii) the Company’s notice to Employee that it will not cure the event giving rise to such termination for Good Reason, Employee shall receive upon such termination (A) a lump sum amount equal to twelve (12) months (“Severance Period”) of the Employee’s annual base salary (determined as the Employee’s highest annual base salary paid to Employee while employed by the Company; with the annual base salary not including bonus payments); (B) subject to Section 2(b) below, continuation of all Benefits for Employee and, if applicable, Employee’s eligible dependents during the Severance Period at the time they would have been provided or paid had the Employee remained an employee of Company during the Severance Period and at the levels provided prior to the event giving rise to a termination; (C) any amounts due and owing to Employee as of the termination date with respect to any base salary, bonus or commissions; and (D) any other payments required by applicable law (including payments with respect to accrued and unused vacation, personal, sick and other days), subject, in each case, to withholding for applicable taxes.

   (b) (i) With respect to Benefits that are eligible for continuation coverage under COBRA, in the event the Company is unable to continue Employee’s and Employee’s eligible dependents (assuming such dependents were covered by Autobytel at the time of termination), participation under the Company’s then existing insurance policies for such Benefits Employee may elect to obtain coverage for such Benefits either by (1) electing COBRA continuation benefits for Employee and Employee’s eligible dependents; (2) obtaining individual coverage for Employee and Employee’s eligible dependents (if Employee and Employee’s
eligible dependents qualify for individual coverage); or (3) electing coverage as eligible dependents under another person’s group coverage (if Employee and Employee’s eligible dependents qualify for such dependent coverage), or any combination of the foregoing alternatives. Employee may also initially elect COBRA continuation benefits and later change to individual coverage or dependent coverage for Employee or any eligible dependent of Employee, but Employee understands that if continuation of Benefits under COBRA is not initially selected by Employee or is later terminated by Employee, Employee will not be able to return to continuation coverage under COBRA. The Company shall pay directly or reimburse to Employee the monthly premiums for the benefits or coverage selected by Employee, with such payment or reimbursement not to exceed the monthly premiums the Company would pay assuming Employee elected continuation of benefits under COBRA. The Company’s obligation to pay or reimburse for the Benefits covered by this Section 2(b)(i) shall terminate upon the earlier of (i) the end of the Severance Period; and (ii) Employee’s employment by an employer that provides Employee and Employee’s eligible dependents with group coverage substantially similar to such Benefits as provided to Employee and Employee’s eligible dependents at the time of the termination of Employee’s employment with the Company, provided that Employee and Employee’s eligible dependents are eligible for participation in such group coverage.

(ii) With respect to Benefits that are not eligible for continuation coverage under COBRA, in the event the Company is unable to continue Employee’s participation under the Company’s then existing insurance policies for such Benefits, Employee may elect to obtain coverage for such Benefits either by (1) obtaining individual coverage for Employee (if Employee qualifies for individual coverage); or (2) electing coverage as an eligible dependent under another person’s group coverage (if Employee qualifies for such dependent coverage), or any combination of the foregoing alternatives. The Company shall pay directly or reimburse to Employee the monthly premiums for the benefits or coverage selected by Employee, with such payment or reimbursement not to exceed the monthly premiums the Company paid for such Benefits at the time of termination of Employee’s employment with the Company. The Company’s obligation to pay or reimburse for the Benefits covered by this Section 2(b)(ii) shall terminate upon the earlier of (i) the end of the Severance Period; and (ii) Employee’s employment by an employer that provides Employee with group coverage substantially similar to such Benefits as provided to Employee at the time of the termination of Employee’s employment with the Company, provided that Employee is eligible for participation in such group coverage. Employee acknowledges and agrees that the Company shall not be obligated to provide any Benefits covered by this Section 2(b)(ii) for Employee if Employee does not qualify for coverage under the Company’s existing insurance policies for such Benefits, for individual coverage, or for dependent coverage.

(c) Upon the earlier of (i) a termination event giving rise to the payment of the amounts and benefits under Section 2(a); (ii) a Change of Control; and (iii) March 1, 2009 (provided that Employee is employed by the Company as of March 1, 2009), Employee shall receive a payment equal to Employee’s 2008 Bonus. For purposes of this Section 2(c), “Employee’s 2008 Bonus” means Employee’s bonus (both Company performance and individual components) for 2008 payable as if both Company and individual targets had been 100% achieved. The bonus payment under this Section 2(c) shall be in lieu of any other bonus payment to Employee with respect to calendar year 2008.
(d) In addition to the payments and benefits set forth above, the Company shall make available to Employee career transition services during the
Severance Period at Right Management or an equivalent provider selected by the Company.

(e) All payments under this Section 2 that (i) arise as a result of a termination of Employee’s employment shall be made to Employee concurrently with any termination by the Company or within two (2) business days of any termination by Employee; and (ii) arise other than by reason of a termination of Employee’s employment shall be made upon the occurrence of the applicable event giving rise to the payment. In any case, all payments that have arisen shall be made no later than two and one-half months after the end of the calendar year in which Employee’s Separation from Service occurs.

(f) The amounts and benefits required by Section 2(a) shall be provided only if the Employee has executed and delivered to the Company (and not revoked) a release in favor of the Company (which release shall be substantially in the form attached as Exhibit A). Other than the payments and benefits provided for in this Section 2, Employee shall not be entitled to any additional amounts from the Company resulting from a termination of Employee’s employment with the Company.


   (a) Gross-Up Payment.

      (i) If it shall be determined that any amount paid, distributed or treated as paid or distributed by the Company to or for the benefit of the Employee (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement, any stock option agreement between the Employee and the Company or otherwise, but determined without regard to any additional payments required under this Section 3) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by the Employee with respect to such excise tax (such excise tax, together with any such interest and penalties, being hereinafter collectively referred to as the "Excise Tax"), then the Employee shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Employee of all federal, state and local taxes (including any interest or penalties imposed with respect thereto) the Employee retains an amount of the Gross-up Payment equal to the Excise Tax imposed upon the Payments. The Employee shall apply for all Gross-Up Payments as reimbursements of taxes the Employee pays under Code Section 4999 for a particular calendar year, with such request being filed by the Employee with the Company not later than forty-five (45) days after such year ends, and payment shall occur not later than the March 15th that immediately follows the end of such 45-day period.

      (ii) The determinations of whether and when a Gross-Up Payment is required under this Section 3 shall be made by the Company based on its good faith interpretation of applicable law. The amount of such Gross-Up Payment and the valuation assumptions to be utilized in arriving at such determination shall be made by the Company which shall provide detailed supporting calculations to the Employee within 15 days of
the receipt of notice from the Employee that there has been a Payment subject to the Excise Tax, or such earlier time as is requested by the Company. Any Gross-Up Payment, as determined pursuant to this Section 3, shall be paid by the Company to the Employee within twenty-five (25) days of the receipt of notice from the Employee that there has been a Payment subject to the Excise Tax. Any determinations by the Company shall be binding upon the Employee, provided, however, if it is later determined that there has been an underpayment of Excise Tax and that the Employee is required to make an additional Excise Tax payment(s) on any Payment or Gross-Up Payment, the Company shall provide a similar full gross-up on such additional liability.

(iii) For purposes of any determinations made by the Company acting under Section 3(a)(ii):

(1) All Payments and Gross-Up Payments with respect to the Employee shall be deemed to be “parachute payments” under Section 280G(b)(2) of the Code and to be “excess parachute payments” under Section 280G(b)(1) of the Code that are fully subject to the Excise Tax under Section 4999 of the Code, except to the extent (if any) that the Company determines in good faith that a Payment in whole or in part does not constitute a “parachute payment” or otherwise is not subject to Excise Tax;

(2) The value of any non-cash benefits or deferred or delayed payments or benefits shall be determined in a manner consistent with the principles of Section 280G of the Code; and

(3) Employee shall be deemed to pay federal, state and local income taxes at the actual maximum marginal rate applicable to individuals in the calendar year in which the Gross-Up Payment is made, net of any applicable reduction in federal income taxes for any state and local taxes paid on the amounts in question assuming the Employee is subject to applicable phase out rules for the highest income tax payers, notwithstanding the actual income tax rate of the Employee.

(b) Claims and Proceedings. The Employee shall notify the Company in writing of any Excise Tax claim by the Internal Revenue Service (or any other state or local taxing authority) that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notification shall be given as soon as practicable but no later than twenty (20) business days after the Employee is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is to be paid. Employee shall not pay such claim prior to the expiration of the 30-day period following the date on which Employee gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Employee in writing prior to the expiration of such period that it desires to contest such Excise Tax claim, the Employee shall: (i) give the Company any information reasonably requested by the Company relating to such claim; (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company after consultation in good faith with the Employee and subject to approval by the Employee (which approval shall not be unreasonably withheld) under the circumstances set forth.
in Section 3(a); (iii) cooperate with the Company in good faith in order to effectively contest such claim; and (iv) permit the Company to participate in any proceeding relating to such claim; provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Employee harmless, on an after-tax basis, from any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expense. Without limitation of the foregoing provisions of this Section 3, the Company shall control the Excise Tax portion of any proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such Excise Tax claim and the Employee agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that the Employee may elect at his sole option to pay the tax claimed and require the Company to contest through a suit for a refund. If the Employee elects to pay such Excise Tax claim and contest through a suit for a refund, the Company shall advance the amount of such payment to the Employee, on an interest-free basis, and shall indemnify and hold the Employee harmless, on an after-tax basis, from any Excise Tax or income tax (including interest and penalties) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and provided, however, that any Company-directed extension of the statute of limitations relating to payment of taxes for the Employee’s taxable year with respect to which such contested Excise Tax amount is claimed to be due shall be effective only if it can be and is limited to the contested Excise Tax liability.

(c) **Refunds.** If, after the Employee’s receipt of an amount advanced by the Company pursuant to this Section 3 for payment of Excise Taxes, the Employee files an Excise Tax refund claim and receives any refund with respect to such claim, the Employee shall (subject to the Company’s complying with the requirements of this Section 3) except as provided below, promptly pay to the Company the amount of any such refund of Excise Tax (together with any interest paid or credited thereon, but after any and all taxes applicable thereto), plus the amount (after any and all taxes applicable thereto) of the refund (if any is applied for and received) of any income tax paid by the Employee with respect to and as a result of his prior receipt of any previously paid Gross-Up Payment indemnifying the Employee with respect to any such Excise Tax later so refunded. In the event the Employee files for a refund of the Excise Tax and such request would, if successful, require the Employee to refund any amount to the Company pursuant to this provision, then the Employee shall be required to seek a refund of the Income Tax portion of any corresponding Gross-Up Payment so long as such refund request would not have a material adverse effect on the Employee (which determination shall be made by independent tax counsel selected by the Employee after good faith consultation with the Company and subject to approval of the Company, which approval shall not be unreasonably withheld). If, after the Employee’s receipt of an amount advanced by the Company pursuant to this Section 3, a determination is made that the Employee shall not be entitled to any refund with respect to such claim and the Company does not notify the Employee in writing of its intent to contest such denial of refund prior to the expiration of thirty (30) days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of the Gross-Up Payment required to be paid.
4. **Taxes.** All payments made pursuant to this Agreement will be subject to withholding of applicable taxes. Notwithstanding the foregoing, and except as otherwise specifically provided elsewhere in this Agreement, Employee is solely responsible and liable for the satisfaction of any federal, state, province or local taxes that may arise with respect to this Agreement (including any taxes arising under Section 409A of the Code). Neither the Company nor any of its employees, officers, directors, agents or service providers shall have any obligation whatsoever to pay such taxes, to prevent Employee from incurring them, or to mitigate or protect Employee from any such tax liabilities. Notwithstanding anything in this Agreement to the contrary, if any amounts that become due under this Agreement on account of Employee’s termination of employment constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code, payment of such amounts shall not commence until Employee incurs a Separation from Service. If, at the time of Employee’s Separation from Service under this Agreement, Employee is a “specified employee” (within the meaning of Section 409A of the Code), any amounts that constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code that become payable to Employee on account of Employee’s Separation from Service (including any amounts payable pursuant to the preceding sentence) will not be paid until after the end of the sixth calendar month beginning after Employee’s Separation from Service (“409A Suspension Period”). Within 14 calendar days after the end of the 409A Suspension Period, Employee shall be paid a lump sum payment in cash equal to any payments delayed because of the preceding sentence. Thereafter, Employee shall receive any remaining benefits as if there had not been an earlier delay.

5. **Arbitration and Equitable Relief.** Any controversy or claim arising out of, or related to, this Agreement, or the breach thereof, shall be governed by the terms of the Arbitration Agreement, which is incorporated herein by reference.

6. **Entire Agreement.** All oral or written agreements or representations express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement. This Agreement contains the entire understanding between the parties hereto and supersedes any prior employment, severance, change-in-control protective or other agreement, plan or arrangement between the Company or any predecessor and Employee with respect to the subject matter of this Agreement. This Agreement shall not affect or operate to reduce any benefit or compensation inuring to Employee of any kind elsewhere provided unless otherwise addressed in this Agreement, and no provision of this Agreement shall be interpreted to mean that Employee is subject to receiving fewer benefits than those available to Employee without reference to this Agreement. The Parties acknowledge and agree that this Agreement specifically amends and restates, and supersedes in its entirety, the Prior Severance Agreement, which shall have no further force or effect.

7. **Notices.** Except as otherwise provided in this Agreement, any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any person in connection with this Agreement shall be in writing. Such notice shall be personally served, sent by fax or cable, or sent prepaid by either registered or certified mail with return receipt requested or Federal Express and shall be deemed given (i) if personally served or by Federal Express, when delivered to the person to whom such notice is addressed, (ii) if given by fax or cable, when sent, or (iii) if given by mail, two (2) business days following deposit in the United States mail. Any notice given by fax or cable shall be confirmed in writing,
by overnight mail or Federal Express within forty-eight (48) hours after being sent. Such notices shall be addressed to the party to whom such notice is to be given at the party’s address set forth below or as such party shall otherwise direct.

If to the Company:
Autobytel Inc.
18872 MacArthur Boulevard
Irvine, California, 92612-1400
Facsimile: (949) 862-1323
Attn: Vice President, Human Resources or comparable title

If to the Employee:
To Employee’s latest home address on file with the Company

8. **No Waiver.** No waiver, by conduct or otherwise, by any party of any term, provision, or condition of this Agreement, shall be deemed or construed as a further or continuing waiver of any such term, provision, or condition nor as a waiver of a similar or dissimilar condition or provision at the same time or at any prior or subsequent time.

9. **Amendment to this Agreement.** No modification, waiver, amendment, discharge or change of this Agreement, shall be valid unless the same is in writing and signed by the party against whom enforcement of such modification, waiver amendment, discharge, or change is or may be sought.

10. **Non-Disclosure.** Unless required by law or to enforce this Agreement, the parties hereto shall not disclose the existence of this Agreement or the underlying terms to any third party, other than their representatives who have a need to know such matters or to any potential Successor Company.

11. **Enforceability; Severability.** If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed exercised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

12. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California without giving effect to such State’s choice of law rules. This Agreement is deemed to be entered into entirely in the State of California. This Agreement shall not be strictly construed for or against either party.

13. **No Third Party Beneficiaries.** Except as otherwise set forth in this Agreement, nothing contained in this Agreement is intended nor shall be construed to create rights running to the benefit of third parties.
14. **Successors of the Company.** The rights and obligations of the Company under this Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company, including any Successor Company. This Agreement shall be assignable by the Company in the event of a merger or similar transaction in which the Company is not the surviving entity, or a sale of all or substantially all of the Company’s assets.

15. **Rights Cumulative.** The rights under this Agreement, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. No failure by any party to exercise, and no delay in exercising, any rights shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by any party preclude any other or future exercise thereof or the exercise of any other right.

16. **No Right or Obligation of Employment.** Employee acknowledges and agrees that nothing in this letter shall confer upon Employee any right with respect to continuation of employment by the Company, nor shall it interfere in any way with Employee’s right or the Company’s right to terminate Employee’s employment at any time, with or without Cause.

17. **Legal and Tax Advice.** Employee acknowledges that: (i) the Company has encouraged Employee to consult with an attorney and/or tax advisor of Employee’s choosing (and at Employee’s own cost and expense) in connection with this Agreement, and (ii) Employee is not relying upon the Company for, and the Company has not provided, legal or tax advice to Employee in connection with this Agreement. It is the responsibility of Employee to seek independent tax and legal advice with regard to the tax treatment of this Agreement and the payments and benefits that may be made or provided under this Agreement and any other related matters. Employee acknowledges that Employee has had a reasonable opportunity to seek and consider advice from Employee’s counsel and tax advisors.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.
IN WITNESS WHEREOF, the Company and Employee have executed and entered into this Agreement effective as of the date first shown above.

AUTOBYTEL INC.

By: /s/ Lorna Larson-Paugh
    Lorna Larson-Paugh
    Vice President, Human Resources

EMPLOYEE

/s/ Wesley Ozima
Wesley Ozima
It is hereby agreed by and between you, [____________________] (for yourself, your spouse, family, agents and attorneys) (jointly, “You”), and Autobytel Inc., its predecessors, successors, affiliates, directors, Employees, shareholders, fiduciaries, insurers, employees and agents (jointly, the “Company”), as follows:

1. You acknowledge that your employment with the Company ended effective [_______], 200[_______], and that you will perform no further duties, functions or services for the Company subsequent to that date.

2. You acknowledge and agree that you have received all vacation pay and other compensation due you from the Company as a result of your employment with the Company and your separation from employment, including, but not limited to, all amounts required under your Amended and Restated Severance Agreement with the Company dated as of November 15, 2008 (the “Severance Agreement”), other than those amounts payable pursuant to Paragraph 3 below and those amounts or benefits, if any, payable or to be provided after the date hereof pursuant to the Severance Agreement if required by the terms thereof. You acknowledge and agree that the Company owes you no additional wages, commissions, bonuses, vacation pay, severance pay, expenses, fees, or other compensation or payments of any kind or nature, other than as provided in this Agreement and those amounts and benefits, if any, payable or to be provided after the date hereof pursuant to the Severance Agreement if required by the terms thereof. All benefits for which you are eligible pursuant to the Severance Agreement will remain in effect for the periods set forth therein.

3. In exchange for your promises in this Agreement and the Severance Agreement, including the release of claims set forth below, if you sign and do not revoke this Agreement, the Company will pay you all amounts due to you under the Severance Agreement, minus legally required state and federal payroll deductions. The payment provided for in this paragraph will be made in the time periods required by the Severance Agreement (except for benefits that will be paid over time as provided therein) and, if no time is specified, within 5 business days of the date of this Separation Agreement and Release.

4. You represent and warrant that you have returned to the Company any and all documents, software, equipment (including, but not limited to, computers and computer-related items), and all other materials or other things in your possession, custody, or control which are the property of the Company, including, but not limited to, Company identification, keys, and the like, wherever such items may have been located; as well as all copies (in whatever form thereof) of all materials relating to your employment, or obtained or created in the course of your employment with the Company.

5. You hereby represent that, other than those materials you have returned to the Company pursuant to Paragraph 4 of this Agreement, you have not copied or caused to be copied, and have not printed-out or caused to be printed-out, any software, computer disks, or
other documents other than those documents generally available to the public, or retained any other materials originating with or belonging to the Company. You further represent that you have not retained in your possession, custody or control, any software, documents or other materials in machine or other readable form, which are the property of the Company, originated with the Company, or were obtained or created in the course of or relate to your employment with the Company.

6. You shall keep confidential, and shall not hereafter use or disclose to any person, firm, corporation, governmental agency, or other entity, in whole or in part, at any time in the future, any trade secret, proprietary information, or confidential information of the Company, including, but not limited to, information relating to trade secrets, processes, methods, pricing strategies, customer lists, marketing plans, product introductions, advertising or promotional programs, sales, financial results, financial records and reports, regulatory matters and compliance, and other confidential matters, except as required by law and as necessary for compliance purposes. These obligations are in addition to the obligations set forth in confidentiality or non-disclosure agreement between you and the Company, which shall remain binding on you.

7. You agree that you have not and will not at any time reveal to anyone, including any former, present or future employee of the Company, the fact, amount, or the terms of this Agreement, except to your immediate family, legal counsel and financial advisor, or as required by law and as necessary for compliance purposes. The Company may disclose the terms of this Agreement and file this Agreement as an exhibit to its public filings if it is required to due so under applicable law, as necessary for compliance purposes or to potential successors or assigns of the Company.

8. You agree that neither you nor anyone acting on your behalf or at your direction will disparage, denigrate, defame, criticize, impugn or otherwise damage or assail the reputation or integrity of the Company to any third party and in particular to any current or former employee, officer, director, contractor, supplier, customer, or client of the Company or prospective or actual purchaser of the equity interests of the Company or its business or assets.

9. In consideration for the payments provided for in Paragraph 3, you unconditionally release and forever discharge the Company, and the Company’s current, former, and future controlling shareholders, subsidiaries, affiliates, related companies, predecessor companies, divisions, directors, trustees, Employees, employees, agents, attorneys, successors, and assigns (and the current, former, and future controlling shareholders, directors, trustees, Employees, employees, agents, and attorneys of such subsidiaries, affiliates, related companies, predecessor companies, and divisions) (referred to collectively as “Releasees”), from any and all known and unknown claims, demands, actions, suits, causes of action, obligations, damages and liabilities of whatever kind or nature and regardless of whether the knowledge thereof would have materially affected your agreement to release the Company hereunder, that arise out of or are related to (a) the Company’s failure to make any payments required under the Severance Agreement (other than those amounts, if any, payable pursuant to Section 2(a) or Section 3 of the Severance Agreement if required by the terms of such sections), and (b) those arising under the Age Discrimination in Employment Act (“ADEA”). The Release will not waive the Employee’s
With respect to the various rights and claims under the ADEA being waived by you in this Agreement, you specifically acknowledge that you have read and understand the provisions of paragraphs 13, 14, and 15 below before signing this Agreement. This general release does not cover rights or claims under the ADEA arising after you sign this Agreement.

10. You represent and warrant that you have not filed, and agree that you will not file, or cause to be filed, any complaint, charge, claim or action involving any claims you have released in the foregoing paragraph. This promise not to sue does not apply to claims for breach of this Agreement. You agree and acknowledge that if you break this promise not to sue, then you will be liable for all consequential damages, including the legal expenses and fees incurred by the Company or any of the Releasees, in defending such a claim.

11. The Company hereby represents and warrants that concurrently with your execution and delivery of this Agreement, the Company has paid to you any and all amounts under the Severance Agreement that are required to be paid to you by the Company as of the date hereof, excluding, without limitation, any amounts required to be paid under this Agreement and those amounts or benefits, if any, payable or to be provided after the date hereof pursuant to the Severance Agreement if and to the extent required by the terms thereof.

12. Excluded from this Agreement are any claims or rights that cannot be waived by law, including the right to file a charge of discrimination with an administrative agency. You agree, however, to waive your right to any monetary recovery in connection with such a charge.

13. You acknowledge that you have hereby been advised in writing to consult with an attorney before you sign this Agreement. You understand that you have twenty-one (21) days within which to decide whether to sign this Agreement, although you may sign this Agreement at any time within the twenty-one (21) day period. If you do sign it, you also understand that you will have an additional 7 days after you sign to change your mind and revoke the Agreement, in which case a written notice of revocation must be delivered to Vice President Human Resources or comparable title, Autobytel Inc., 18872 MacArthur Blvd., Irvine, California 92612-1400, on or before the seventh (7th) day after your execution of the Agreement. You understand that the Agreement will not become effective until after that seven (7) day period has passed.

14. You acknowledge that you are signing this Agreement knowingly and voluntarily and intend to be bound legally by its terms.

15. You hereby acknowledge that no promise or inducement has been offered to you, except as expressly stated above and in the Severance Agreement, and you are relying upon none. This Agreement and the Severance Agreement represent the entire agreement between you and the Company with respect to the subject matter hereof, and supersede any other written or oral understandings between the parties pertaining to the subject matter hereof and may only be amended or modified with the prior written consent of you and the Company.
16. You certify that you have not experienced a job-related illness or injury for which you have not already filed a claim.

17. If any provision of this Agreement is held to be invalid, the remainder of the Agreement, nevertheless, shall remain in full force and effect in all other circumstances.

18. This Agreement does not constitute an admission that the Company or any other Releasee has violated any law, rule, regulation, contractual right or any other duty or obligation.

19. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the law of that state, without reference to conflict of law provisions thereof. The language of all parts in this Agreement shall be construed as a whole, according to fair meaning, and not strictly for or against any party.

20. Employee acknowledges that: (i) the Company has encouraged Employee to consult with an attorney and/or tax advisor of Employee’s choosing (and at Employee’s own cost and expense) in connection with this Agreement, and (ii) Employee is not relying upon the Company for, and the Company has not provided, legal or tax advice to Employee in connection with this Agreement. It is the responsibility of Employee to seek independent tax and legal advice with regard to the tax treatment of this Agreement and the payments and benefits that may be made or provided under this Agreement and any other related matters. Employee acknowledges that Employee has had a reasonable opportunity to seek and consider advice from Employee’s counsel and tax advisors.

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES THE RELEASE OF CERTAIN CLAIMS.

Dated: ________________________________, 200__

[Employee Name]

AUTOBYTEL INC.

Dated: ________________________________, 200__

By: ________________________________
[Officer’s Name]
[Title]
Exhibit 21.1

Subsidiaries of Autobytel Inc.

Auto-By-Tel Acceptance Corporation, a Delaware corporation
Auto-By-Tel Insurance Services, Inc., a Delaware corporation
Autoweb.com, Inc., a Delaware corporation
Autobytel I Corp., a Delaware corporation
Car.com, Inc., a Delaware corporation
Consent of Independent Registered Public Accounting Firm


/or/ ERSNT & YOUNG LLP

Orange County, California
March 11, 2009
Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in Registration Statements on Form S-8 (No. 333-135076, No. 333-116930, No. 333-107525, No. 333-90045, No. 333-77943, No. 333-33038, No. 333-39396, No. 333-67692, No. 333-70334 and No. 333-145280) of Autobytel Inc. and subsidiaries (the Company) of our report dated March 17, 2008 related to our audit of the consolidated financial statements and financial statement schedule which appear in this Annual Report on Form 10-K of the Company for the year ended December 31, 2008.

/s/ McGladrey & Pullen

Irvine, CA

March 11, 2009
CERTIFICATION

I, Jeffrey H. Coats, certify that:

1. I have reviewed this annual report on Form 10-K 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: March 13, 2009

/s/ JEFFREY H. COATS
Jeffrey H. Coats,
President and Chief Executive Officer
CERTIFICATION

I, Curtis E. DeWalt, certify that:

1. I have reviewed this annual report on Form 10-K 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: March 13, 2009

/s/ CURTIS E. DEWALT
Curtis E. DeWalt,
Senior Vice President and
Chief Financial Officer
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 Annual Report of Autobytel Inc. (the “Company”) on Form 10-K for the period ended December 31, 2008 (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. ss. 1350, as adopted pursuant to ss. 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
March 13, 2009

/s/ CURTIS E. DEWALT
Curtis E. DeWalt
Senior Vice President and
Chief Financial Officer
March 13, 2009

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.