

# inContact, Inc. (SAAS)

## 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filed on 05/04/2012

Filed Period 03/31/2012

THOMSON REUTERS ACCELUS™



THOMSON REUTERS

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

---

**FORM 10-Q**

---

**Quarterly Report Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

For the Quarterly Period Ended March 31, 2012

Commission File No. 1-33762

---



**inContact, Inc.**

(Exact name of registrant as specified in its charter)

---

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

**87-0528557**  
(IRS Employer  
Identification No.)

**7730 S. Union Park Avenue, Suite 500, Salt Lake City, UT 84047**

(Address of principal executive offices and Zip Code)

**(801) 320-3200**

(Registrant's telephone number, including area code)

---

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding as of April 27, 2012
Common Stock, \$0.0001 par value	43,876,003 shares

---

---

---

[Table of Contents](#)

TABLE OF CONTENTS

ITEM NUMBER AND CAPTION

**PART I – FINANCIAL INFORMATION**

**Item 1. Financial Statements**

[Condensed Consolidated Balance Sheets as of March 31, 2012 and December 31, 2011 \(unaudited\)](#) 3

[Condensed Consolidated Statements of Operations and Comprehensive Loss for the Three Months Ended March 31, 2012 and 2011 \(unaudited\)](#) 4

[Condensed Consolidated Statement of Stockholders' Equity for the Three Months Ended March 31, 2012 \(unaudited\)](#) 5

[Condensed Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2012 and 2011 \(unaudited\)](#) 6

[Notes to Condensed Consolidated Financial Statements \(unaudited\)](#) 7

[Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations](#) 13

[Item 3. Quantitative and Qualitative Disclosures About Market Risk](#) 18

[Item 4. Controls and Procedures](#) 18

**PART II – OTHER INFORMATION**

[Item 1. Legal Proceedings](#) 19

[Item 1A. Risk Factors](#) 19

[Item 6. Exhibits](#) 19

[SIGNATURES](#) 20

[Table of Contents](#)

**INCONTACT, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS—(Unaudited)**  
*(in thousands, except share and per share data)*

	March 31, 2012	December 31, 2011
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 16,182	\$ 17,724
Restricted cash	246	246
Accounts and other receivables, net of allowance for uncollectible accounts of \$785 and \$491, respectively	12,851	12,916
Other current assets	3,160	2,526
Total current assets	32,439	33,412
Property and equipment, net	20,016	18,685
Intangible assets, net	1,407	1,394
Goodwill	4,086	4,086
Other assets	902	837
Total assets	<u>\$ 58,850</u>	<u>\$ 58,414</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Trade accounts payable	\$ 6,998	\$ 7,180
Accrued liabilities	2,048	2,769
Accrued commissions	1,529	1,291
Current portion of deferred revenue	1,369	1,056
Current portion of long-term debt and capital lease obligations	3,113	2,831
Total current liabilities	15,057	15,127
Long-term debt and capital lease obligations	6,783	5,964
Deferred rent	329	161
Deferred revenue	1,080	946
Total liabilities	23,249	22,198
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.0001 par value; 100,000,000 shares authorized; 43,862,404 and 43,623,381 shares issued and outstanding as of March 31, 2012 and December 31, 2011, respectively	4	4
Additional paid-in capital	112,549	111,415
Accumulated deficit	(76,952)	(75,203)
Total stockholders' equity	35,601	36,216
Total liabilities and stockholders' equity	<u>\$ 58,850</u>	<u>\$ 58,414</u>

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

**INCONTACT, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS and COMPREHENSIVE LOSS—(Unaudited)**  
*(in thousands, except per share data)*

	Three months ended	
	March 31,	
	2012	2011
Net revenue:		
Software	\$ 12,302	\$ 9,334
Telecom	13,373	12,001
Total net revenue	<u>25,675</u>	<u>21,335</u>
Costs of revenue:		
Software	5,090	3,590
Telecom	9,227	8,898
Total costs of revenue	<u>14,317</u>	<u>12,488</u>
Gross profit	<u>11,358</u>	<u>8,847</u>
Operating expenses:		
Selling and marketing	7,020	5,210
Research and development	1,837	1,400
General and administrative	4,094	3,129
Total operating expenses	<u>12,951</u>	<u>9,739</u>
Loss from operations	<u>(1,593)</u>	<u>(892)</u>
Other income (expense):		
Interest expense	(94)	(132)
Change in fair value of warrants	—	50
Other expense	(47)	(13)
Total other expense	<u>(141)</u>	<u>(95)</u>
Loss before income taxes	<u>(1,734)</u>	<u>(987)</u>
Income tax expense	<u>(15)</u>	<u>(15)</u>
Net loss and comprehensive loss	<u>\$ (1,749)</u>	<u>\$ (1,002)</u>
Net loss per common share:		
Basic and diluted	\$ (0.04)	\$ (0.03)
Weighted average common shares outstanding:		
Basic and diluted	44,188	36,121

See accompanying notes to condensed consolidated financial statements.

---

[Table of Contents](#)

**INCONTACT, INC.**  
**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY—(Unaudited)**  
*(in thousands)*

	<u>Common Stock</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u> <u>Capital</u>	<u>Deficit</u>	
Balance at December 31, 2011	43,624	\$ 4	\$ 111,415	\$ (75,203)	\$ 36,216
Common stock issued for options exercised	226	—	580	—	580
Common stock issued under the employee stock purchase plan	12	—	45	—	45
Stock-based compensation	—	—	509	—	509
Net loss	—	—	—	(1,749)	(1,749)
Balance at March 31, 2012	<u>43,862</u>	<u>\$ 4</u>	<u>\$ 112,549</u>	<u>\$ (76,952)</u>	<u>\$ 35,601</u>

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

**INCONTACT, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS—(Unaudited)**  
*(in thousands)*

	<b>Three months ended March 31,</b>	
	<b>2012</b>	<b>2011</b>
Cash flows from operating activities:		
Net loss	\$ (1,749)	\$ (1,002)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation of property and equipment	1,087	869
Amortization of software development costs	899	575
Amortization of intangible assets	80	137
Amortization of note financing costs	8	24
Interest accretion	4	5
Stock-based compensation	509	244
Stock issued for services	—	19
Change in fair value of warrants	—	(50)
Loss on disposal of property and equipment	46	13
Changes in operating assets and liabilities:		
Accounts and other receivables, net	141	(373)
Other current assets	(639)	(481)
Other non-current assets	(65)	56
Trade accounts payable	(183)	724
Accrued liabilities	(661)	597
Accrued commissions	238	(61)
Deferred rent	19	(19)
Deferred revenue	447	195
Net cash provided by operating activities	<u>181</u>	<u>1,472</u>
Cash flows from investing activities:		
Contingent purchase price payments	—	(135)
Purchase of intangible assets	(93)	—
Capitalized software development costs	(1,361)	(1,129)
Purchases of property and equipment	(704)	(1,098)
Net cash used in investing activities	<u>(2,158)</u>	<u>(2,362)</u>
Cash flows from financing activities:		
Proceeds from exercise of options	580	53
Proceeds from sale of stock under employee stock purchase plan	45	39
Principal payments on long-term debt and capital leases	(690)	(530)
Borrowings under the revolving credit notes	3,000	5,230
Payments under the revolving credit notes	(2,500)	(4,000)
Net cash provided by financing activities	<u>435</u>	<u>792</u>
Net decrease in cash and cash equivalents	(1,542)	(98)
Cash and cash equivalents at the beginning of the period	<u>17,724</u>	<u>10,321</u>
Cash and cash equivalents at the end of the period	<u>\$ 16,182</u>	<u>\$ 10,223</u>
Supplemental schedule of non-cash investing and financing activities:		
Payments due for property and equipment included in trade accounts payable	\$ 237	\$ 41
Property and equipment and other assets financed through capital leases	\$ 1,284	\$ 1,005

See accompanying notes to condensed consolidated financial statements.

**INCONTACT, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**NOTE 1. ORGANIZATION AND BASIS OF PRESENTATION**

*Organization*

inContact, Inc. ("inContact," "we," "us," "our," or the "Company") is incorporated in the state of Delaware. We provide cloud-based contact center applications through our inContact® portfolio, an advanced contact handling and performance management software application. "Cloud-based" is a term to refer to computing, data storage and delivery of technology services through the Internet, which includes software-as-a-service ("SaaS"). Our services provide a variety of connectivity options for carrying inbound calls to our inContact portfolio or linking agents to our inContact applications. We provide customers the ability to monitor agent effectiveness through our user survey tools and the ability to efficiently monitor their agent needs. We are also an aggregator and provider of telecommunications services. We contract with a number of third party providers for the right to resell the various telecommunication services and products they provide, and then offer all of these services to the customers. These services and products allow customers to buy only the telecommunications services they need, combine those services in a customized enhanced contact center package, receive one bill for those services and call a single point of contact if a service problem or billing issue arises.

*Basis of Presentation*

These unaudited condensed consolidated financial statements of inContact and its subsidiaries have been prepared in accordance with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Such rules and regulations allow the omission of certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States, so long as the statements are not misleading. In the opinion of management, these financial statements and accompanying notes contain all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position and results of operations for the periods presented herein. These condensed consolidated financial statements should be read in conjunction with the consolidated audited financial statements and notes thereto contained in the Annual Report on Form 10-K for the year ended December 31, 2011, filed with the SEC on March 9, 2012. The results of operations for the three month period ended March 31, 2012 are not necessarily indicative of the results to be expected for the year ending December 31, 2012. Our significant accounting policies are set forth in Note 1 to the consolidated financial statements in the 2011 Annual Report on Form 10-K.

*Recent Accounting Pronouncements*

Effective January 1, 2012, the Company adopted Financial Accounting Standards Board ("FASB") accounting guidance which requires an entity to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income, or in two separate but consecutive statements. The guidance eliminates the option to present components of other comprehensive income as part of the statement of equity. In addition, in December 2011, the FASB issued an amendment to the accounting standard which defers the requirement to present components of reclassifications of other comprehensive income on the face of the income statement. In accordance with the guidance, we have presented condensed statements of operations and comprehensive loss as a single continuous statement.

**NOTE 2. REVENUE RECOGNITION**

Revenue is recognized when all of the following four criteria are met: (1) persuasive evidence of an arrangement exists, (2) the fee is fixed or determinable, (3) collection is reasonably assured, and (4) delivery has occurred or services have been rendered.

Revenue is determined and recognized based on the type of service provided for the customer as follows:

- *inContact portfolio of services.* Revenue is derived from the delivery of any of our software services within the inContact portfolio which are provided on a monthly recurring subscription basis. Monthly recurring subscription charges are generally billed in arrears and recognized for the period in which they are earned. For subscription contracts with multiple elements (hosted software, training, installation and long distance services), we follow the guidance provided in ASC 605-25, *Revenue Recognition for Multiple-Element Arrangements*, because customers do not have the right to take possession of the software. As such, these arrangements are considered service contracts and are not within the scope of Industry Topic 985, *Software*. In addition to the monthly recurring subscription revenue, revenue is also derived on a non-recurring basis for professional services included in implementing or improving a customer's inContact portfolio experience. Because our professional services, such as training and installation, are not considered to have

---

## [Table of Contents](#)

standalone value, we defer revenue for upfront fees received for professional services in multiple element arrangements and recognize such fees as revenue over the estimated life of the customer. Professional services sold separately (i.e. not sold contemporaneously with the negotiation of a subscription contract) are recognized as revenue over the period that services are provided. Fees for telecommunications services in multiple element arrangements within the inContact portfolio are based on usage and are recognized as revenue in the same manner as fees for telecommunications services discussed in the following paragraph. Also included is revenue related to the quarterly minimum purchase commitments through the year ended 2013, from a related party reseller (Note 11).

- *Telecommunications services.* Revenue is derived from telecommunications services, such as dedicated transport, switched long distance and data services. These services are provided over our network or through third party telecommunications providers. Our network is the backbone of our inContact portfolio and allows us to provide the all-in-one inContact solution. Revenue for the telecommunications usage is derived based on customer specific rate plans and the customer's call usage and is recognized in the period the call is initiated. Customers are also billed monthly charges in arrears and revenue is recognized for such charges over the billing period. If the billing period spans more than one month, earned but unbilled revenues are recognized as revenue for incurred usage to date.

### **NOTE 3. BASIC AND DILUTED NET (LOSS) INCOME PER COMMON SHARE**

Basic earnings per common share is computed by dividing the net income or loss applicable to common shareholders by the weighted-average number of common shares outstanding during the period. Diluted earnings per common share is computed by dividing the net income or loss by the sum of the weighted-average number of common shares outstanding plus the weighted average common stock equivalents, which would have been outstanding if the potentially dilutive securities had been issued. Potentially dilutive securities include outstanding options, warrants and restricted stock units. The dilutive effect of potentially dilutive securities is reflected in diluted earnings per common share by application of the treasury method.

As a result of incurring a net loss for the three months ended March 31, 2012 and 2011, no potentially dilutive securities are included in the calculation of diluted earnings per share because such effect would be anti-dilutive. We had potentially dilutive securities representing approximately 5.1 million and 5.6 million shares of common stock at March 31, 2012 and 2011, respectively.

### **NOTE 4. FAIR VALUE OF FINANCIAL INSTRUMENTS**

The accounting guidance for fair value measurements defines fair value, establishes a market-based framework or hierarchy for measuring fair value and expands disclosures about fair value measurements. The guidance is applicable whenever assets and liabilities are measured and included in the financial statements at fair value. The fair value of a financial instrument is the amount that could be received upon the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Financial assets are marked to bid prices and financial liabilities are marked to offer prices. Fair value measurements do not include transaction costs. The fair value hierarchy prioritizes the quality and reliability of the information used to determine fair values. Categorization within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement. The fair value hierarchy is defined into the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

#### *Recurring Level 3 Activity*

The table below provides a reconciliation of the beginning and ending balances for the major classes of assets and liabilities measured at fair value using significant unobservable inputs (Level 3). There was no activity for the period ended March 31, 2012. The table reflects activity for the quarter for all financial assets and liabilities categorized as Level 3 during the period ended March 31, 2011 (*in thousands*):

	Warrants
Balance at December 31, 2010	\$ (246)
Total change in fair value	50
Balance at March 31, 2011	\$ (196)

---

## [Table of Contents](#)

### *Warrants*

We had issued 385,000 warrants, which were exercised in May 2011, with provisions that protected holders from a decline in the stock price instrument if we issued equity shares for a price that was lower than the exercise price of those instruments or issued new warrants or convertible instruments that had a lower exercise price. In accordance with accounting guidance, these warrants were recognized as liabilities and recorded at fair value on each reporting date. We measured the estimated fair value of these warrants as of March 31, 2011 and recorded a \$50,000 gain during the three months ended March 31, 2011 to record the liabilities associated with these warrants at their estimated fair value totaling \$196,000 as of that date as compared to their estimated fair value of \$246,000 at December 31, 2010. We estimated the fair value of these securities using a Black-Scholes valuation model, which approximated a lattice valuation model. The assumptions used in the Black-Scholes model at March 31, 2011 were as follows: a volatility rate of 46%, a risk-free interest rate of 0.15%, an expected life of 0.15 years and no dividend yield. The assumptions used in the Black-Scholes model at December 31, 2010 were as follows: a volatility rate of 41%, a risk-free interest rate of 0.19%, an expected life of 0.39 years and no dividend yield.

### *Fair Value Estimates*

We did not have any transfers of assets and liabilities between Level 1 and Level 2 of the fair value measurement hierarchy during the three months ended March 31, 2012 and 2011. No financial assets or liabilities were measured at fair value on a recurring basis or a non-recurring basis at March 31, 2012 and December 31, 2011.

### *Fair Value of Other Financial Instruments*

The carrying amounts reported in the accompanying condensed consolidated balance sheets for cash and cash equivalents approximate fair values because of the immediate or short-term maturities of these financial instruments. The estimated fair values of the revolving credit note and promissory notes payable were computed using a discounted cash flow model and approximated the carrying amount as the individual notes bear interest at market interest rates and are considered to be classified within Level 2 of the fair value hierarchy.

## **NOTE 5. INTANGIBLES**

Intangible assets consisted of the following (*in thousands*):

	March 31, 2012			December 31, 2011		
	Gross assets	Accumulated amortization	Intangible assets, net	Gross assets	Accumulated amortization	Intangible assets, net
Customer lists acquired	\$ 16,495	\$ 16,236	\$ 259	\$ 16,495	\$ 16,222	\$ 273
Technology and patents	10,231	10,013	218	10,231	9,966	265
Tradenames and trademarks	1,194	411	783	1,194	392	802
Domain name	54	—	54	54	—	54
Patents in process	93	—	93	—	—	—
Total intangible assets	<u>\$ 28,067</u>	<u>\$ 26,660</u>	<u>\$ 1,407</u>	<u>\$ 27,974</u>	<u>\$ 26,580</u>	<u>\$ 1,394</u>

Amortization expense was \$80,000 and \$137,000 during the three months ended March 31, 2012 and 2011, respectively.

Based on the recorded intangibles at March 31, 2012, estimated amortization expense is expected to be \$158,000 during the remainder of 2012, \$210,000 in 2013, \$210,000 in 2014, \$140,000 in 2015, \$133,000 in 2016 and \$409,000 thereafter.

---

[Table of Contents](#)

**NOTE 6. ACCRUED LIABILITIES**

Accrued liabilities consisted of the following (*in thousands*):

	March 31, 2012	December 31, 2011
Accrued payphone and carrier charges	\$ 306	\$ 342
Accrued payroll and other compensation	1,467	1,895
Current portion of deferred rent	1	150
Other	274	382
Total accrued liabilities	<u>\$ 2,048</u>	<u>\$ 2,769</u>

**NOTE 7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS**

We drew \$3.0 million from our revolving credit loan agreement of \$8.5 million ("Revolving Credit Agreement") with Zions First National Bank ("Zions") and paid down \$2.5 million on the Revolving Credit Agreement during the three months ended March 31, 2012. The balance of our Revolving Credit Agreement was \$3.0 million at March 31, 2012, which was paid in April 2012. The interest rate under the Revolving Credit Agreement is 4.5% per annum above the ninety day London InterBank Offered Rate ("LIBOR"), from time to time in effect, adjusted as of the date of any change in the ninety day LIBOR. Interest under the Revolving Credit Agreement is paid monthly in arrears, and all principal is due in July 2013.

The Zions Revolving Credit Agreement contains certain covenants, with the most significant covenants being a requirement to maintain a specified minimum liquidity position and minimum quarterly EBITDA (defined as earnings before interest expense, income tax expense, depreciation, amortization and other non-cash charges), a requirement to maintain a minimum working capital balance and a requirement to maintain a minimum cash balance, which were established by amendment to the Revolving Credit Agreement in June 2011. As of March 31, 2012, the minimum liquidity position and minimum quarterly EBITDA covenant requires that the aggregate value of cash, cash equivalents and marketable securities shall not be less than the outstanding balance on the Revolving Credit Agreement plus \$2.5 million, and if at any time the aggregate value is less than the minimum liquidity position, a minimum quarterly EBITDA of \$1.0 million, calculated as of the last day of each calendar quarter, is required. Based on our projections, we believe we will maintain compliance with our loan covenants through 2012, however if future operating results are less favorable than currently anticipated, we may need to seek further amendments to modify its loan covenants. If we are unable to modify the loan covenants on acceptable terms, we would intend to reduce spending levels or take other restructuring actions. The minimum working capital covenant requires minimum working capital of \$1.0 million at all times during the term of the agreement and the minimum cash balance covenant requires a minimum cash balance of \$3.5 million or the amount available under the line is reduced to 75% of billed accounts receivable. We were in compliance with all financial covenants related to the Revolving Credit Agreement at March 31, 2012.

We paid \$208,000 of the \$2.5 million promissory note payable ("Promissory Note") to Zions during the three months ended March 31, 2012. The Promissory Note balance was \$2.2 million at March 31, 2012.

During the three months ended March 31, 2012, we utilized the remaining \$1.3 million of the \$3.0 million equipment leasing facility commitment leasing entered into with Zions Credit Corporation. We paid \$481,000 of capital lease obligations during the three months ended March 31, 2012. The balance of the capital lease obligations was \$4.8 million at March 31, 2012.

**NOTE 8. CAPITAL TRANSACTIONS**

We received proceeds of \$580,000 from the exercise of 226,000 options during the three months ended March 31, 2012. We issued 12,000 shares of common stock for proceeds of \$45,000 under the employee stock purchase plan during the three month period ended March 31, 2012.

**NOTE 9. COMMITMENTS AND CONTINGENCIES**

In May 2009, the Company was served in a lawsuit titled *California College, Inc., et al., v. UCN, Inc., et al.* In the lawsuit, California College allege that (1) the Company made intentional and/or negligent misrepresentations in connection with the sale of the Company's services from Insidesales.com, Inc., another defendant in the lawsuit, (2) that the Company breached its service contract with California College and the contract between California College and Insidesales.com by failing to deliver contracted services and product and failing to abide by implied covenants of good faith and fair dealing, and (3) the conduct of the Company interfered with prospective economic business relations of California College with respect to enrolling students. California College is seeking

---

[Table of Contents](#)

damages, in an amount to be proven at trial, in excess of \$20 million. Pursuant to a motion filed by Insidesales.com, California College filed an amended complaint that has been answered by Insidesales.com and us. Furthermore, Insidesales.com and inContact filed cross-claims against one another, which they subsequently agreed to dismiss with prejudice. In October 2011, California College reached a settlement with Insidesales.com, the terms of which have not been disclosed and remain confidential. The Company has denied all of the substantive allegations of the complaint and cross-claim and intends to defend the claims vigorously. Management believes the claims against inContact are without merit and no liability has been recorded.

We are the subject of certain other legal matters considered incidental to our business activities. It is the opinion of management that the ultimate disposition of these matters will not have a material impact on our financial position, liquidity or results of operations.

#### NOTE 10. STOCK-BASED COMPENSATION

Stock-based compensation cost is measured at the grant date based on the fair value of the award granted and recognized as expense using the graded-vesting method over the period in which the award is expected to vest. Stock-based compensation expense recognized during a period is based on the value of the portion of stock-based awards that is ultimately expected to vest during the period. As stock-based compensation expense recognized in the results for the year is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures.

We recorded stock-based compensation expense (including stock options, warrants, restricted stock, restricted stock units and employee stock purchase plan) to the same departments where cash compensation was recorded as follows (*in thousands*):

	Three months ended March 31,	
	2012	2011
Costs of revenue	\$ 130	\$ 56
Selling and marketing	82	44
Research and development	123	33
General and administrative	174	130
Total	<u>\$ 509</u>	<u>\$ 263</u>

We utilize the Black-Scholes model to determine the estimated fair value for grants of stock options and warrants. The Black-Scholes model requires the use of highly subjective and complex assumptions to determine the fair value of stock-based awards, including the option's expected term, expected dividend yield, the risk-free interest rate and the price volatility of the underlying stock. The expected dividend yield is based on our historical dividend rates. Risk-free interest rates are based on U.S. treasury rates. Volatility is based on historical stock prices over a period equal to the estimated life of the option.

The grant date fair value of the restricted stock and restricted stock unit awards was calculated using the closing market price of the Company's common stock on the grant date, with the compensation expense amortized over the vesting period of the restricted stock awards, net of estimated forfeitures.

We estimated the fair value of options granted under our employee stock-based compensation arrangements at the date of grant using the Black-Scholes model using the following weighted-average assumptions for the quarters ended March 31, 2012 and 2011:

	Three months ended March 31,	
	2012	2011
Dividend yield	None	None
Volatility	72%	70%
Risk-free interest rate	0.48%	1.52%
Expected life (years)	4.1	4.2

During the three months ended March 31, 2012, we granted 100,250 stock options with exercise prices ranging from \$4.44 to \$5.85 and a weighted-average fair value of \$2.64. During the three months ended March 31, 2011, we granted 481,000 stock options with exercise prices ranging from \$3.10 to \$3.42 and a weighted-average fair value of \$1.78.

As of March 31, 2012, there was \$1.3 million of unrecognized compensation cost related to non-vested stock-based compensation awards granted under our stock-based compensation plans. The compensation cost is expected to be recognized over a weighted average period of 1.2 years.

---

[Table of Contents](#)**NOTE 11. RELATED PARTY TRANSACTIONS**

We paid the Chairman of the Board of Directors (the "Chairman") \$7,000 per month during the three months ended March 31, 2012 and 2011 for consulting, marketing and capital raising activities. We owed the Chairman \$7,000 at March 31, 2012 and December 31, 2011. We recognized \$750,000 of software revenue during the three months ended March 31, 2012, under an arrangement with a reseller, which is also a principal shareholder of inContact.

**NOTE 12. SEGMENTS**

We operate under two business segments: Software and Telecom. The Software segment includes all monthly recurring revenue related to the delivery of our software applications, plus the associated professional services and setup fees, and revenue related to quarterly minimum purchase commitments through the year ended 2013, from a related party reseller. The Telecom segment includes all voice and data long distance services provided to customers.

Management evaluates segment performance based on operating data (revenue, costs of revenue, and other operating expenses). Management does not evaluate and manage segment performance based on assets.

For segment reporting, we classify operating expenses as either "direct" or "indirect." Direct expense refers to costs attributable solely to either selling and marketing efforts or research and development efforts. Indirect expense refers to costs that management considers to be overhead in running the business. In evaluating segment performance, management evaluates expenditures for both selling and marketing and research and development efforts at the segment level without the allocation of overhead expenses, such as rent, utilities and depreciation on property and equipment.

Operating segment revenues and profitability for the three months ended March 31, 2012 and 2011 were as follows (*in thousands*):

	Three months ended March 31, 2012			Three months ended March 31, 2011		
	Software	Telecom	Consolidated	Software	Telecom	Consolidated
Net revenue	\$ 12,302	\$ 13,373	\$ 25,675	\$ 9,334	\$ 12,001	\$ 21,335
Costs of revenue	5,090	9,227	14,317	3,590	8,898	12,488
Gross profit	7,212	4,146	11,358	5,744	3,103	8,847
Gross margin	59%	31%	44%	62%	26%	42%
Operating expenses:						
Direct selling and marketing	5,805	843	6,648	4,149	754	4,903
Direct research and development	1,654	—	1,654	1,239	—	1,239
Indirect	3,833	816	4,649	2,844	753	3,597
(Loss) income from operations	\$ (4,080)	\$ 2,487	\$ (1,593)	\$ (2,488)	\$ 1,596	\$ (892)

**NOTE 13. SUBSEQUENT EVENTS**

In April 2012, we entered into a term loan agreement ("Term Loan") with Zions for \$4.0 million, which matures on May 1, 2016. We are allowed to draw up to the total of \$4.0 million through April 30, 2013. Interest, if any, will be paid monthly in arrears, commencing on May 1, 2012, and the principal will be paid in 36 equal monthly installments commencing on June 1, 2013. The interest rate under the Term Loan is 4.5% per annum above the ninety day LIBOR rate, adjusted as of the date of any change in the ninety day LIBOR. The financial covenants are the same as the Revolving Credit Agreement.

In April 2012, we amended the financial covenants and changed the maturity date of the Revolving Credit Agreement with Zions to July 2014. The amended financial covenants require that the aggregate value of cash, cash equivalents and marketable securities shall not be less than the outstanding balance on the Revolving Credit Agreement plus \$2.5 million, and if at any time the aggregate value is less than the minimum liquidity position, a minimum quarterly EBITDA of \$1.8 million, calculated as of the last day of each calendar quarter, is required.

---

[Table of Contents](#)

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis of financial condition and results of operations should be read in conjunction with the December 31, 2011 consolidated financial statements and notes thereto, along with the Management's Discussion and Analysis of Financial Condition and Results of Operations included in our 2011 Annual Report on Form 10-K, filed separately with the U.S. Securities and Exchange Commission.

**OVERVIEW**

inContact began in 1997 as a reseller of telecommunications services and has evolved to become a leading provider of cloud-based contact center solutions. We help contact centers around the world create effective customer experiences through its powerful portfolio of cloud-based contact center call routing, self-service and agent optimization solutions. Our services and solutions enable contact centers to operate more efficiently, optimize the cost and quality of every customer interaction, create new pathways to profit and ensure ongoing customer-centric business improvement and growth.

We began offering cloud-based contact center solutions to the contact center market in 2005. Our dynamic technology platform provides our customers a solution without the costs and complexities of premise-based systems. Our proven delivery model provides compelling cost savings by removing the complexities of deploying and maintaining a premise-based solution, while providing flexibility to change with business needs.

**DEVELOPMENTS**

Our primary financial objective is to generate recurring cloud-based software revenue from sustainable sources by investing in various cloud-based software growth initiatives, as we believe we are in the early stages of a large, long-term market. In the past, we have grown that business through our direct sales initiatives and referral partner arrangements. In 2011, we added a new sales channel by entering into our first reseller agreement for our cloud-based contact center solutions with Siemens Enterprise Communications ("Siemens"). Siemens is a world-wide distributor/reseller of our portfolio of cloud-based software solutions, which includes the exclusive right to sell our solutions in EMEA. In November 2011, we entered into a North America reseller agreement with Verizon Business Communications ("Verizon"). Our opportunity in 2012 is to leverage the marketing and sales capacity of these large enterprises selling to call center owners and operators to increase our business in North America and establish our business overseas – all of which we believe will generate growth in our recurring cloud-based software revenue.

The new opportunity requires us to invest in the infrastructure to deliver our cloud-based software to new enterprise and international customers and increase our customer service and support capacity. We began making that investment in 2011 and have continued making that investment in 2012. The investments made have increased our cost of services and other operating expenses beginning in 2011 and continuing into 2012, which have adversely affected our margins and results of operations. Our ability to recoup that investment depends on how successful our reseller strategy is in 2012 and beyond, but we were able to mitigate the risk associated with future realization of sales, in part, by obtaining minimum purchase commitments from Siemens to generate \$5.0 million of net software revenue in 2012 and \$10.0 million in 2013.

**SOURCES OF REVENUE**

We derive our revenues from two major business activities: (1) hosting and support of our inContact portfolio of software services and associated professional services and (2) reselling telecommunication services. Our primary business focus is marketing and selling our inContact portfolio.

*Software*

Software delivery and support of our inContact portfolio is provided on a monthly recurring subscription basis. Monthly recurring charges are billed in arrears and recognized for the period in which they are earned. In addition to the monthly recurring revenue, revenue is also received on a non-recurring basis for professional services included in implementing or improving a user's inContact portfolio experience. Customers access "cloud-based" software and data through a secure Internet connection. Support services include technical assistance for our software products and product upgrades and enhancements on a when and if available basis. Our telecommunications and data network is fundamental to our inContact portfolio and allows us to provide the all-in-one inContact solution. Software service revenue also includes revenue related to quarterly minimum purchase commitments through the year ended 2013, from a related party reseller.

---

[Table of Contents](#)

***Telecom***

We continue to derive revenue from traditional telecommunications services such as dedicated transport, switched long distance and data services. These services are provided over our network or through third party telecommunications providers. Revenue for transactional long distance usage is derived based on user specific rate plans and the user's call usage and is recognized in the period the call is initiated. Users are also billed monthly charges in arrears and revenue is recognized for such charges over the billing period. If the billing period spans more than one month, earned but unbilled revenues are recognized as revenue for incurred usage to date.

**COSTS OF REVENUE AND OPERATING EXPENSES**

***Costs of Revenue***

Costs of revenue consist primarily of payments to third party long distance service providers for resold telecommunication services to our customers. Costs of revenue also include salaries (including stock-based compensation) and related expenses for our software services delivery, support and professional services organizations, equipment depreciation relating to our services, amortization of acquired intangible assets, amortization of capitalized internal use software development costs, and allocated overhead, such as rent, utilities and depreciation on property and equipment. As a result, overhead expenses are included in costs of revenue and each operating expense category. The cost associated with providing professional services is significantly higher as a percentage of revenue than the cost associated with delivering our software services due to the labor costs associated with providing professional services. We anticipate that we will incur additional costs for long distance service providers, hosting, support, employee salaries and related expenses, to support delivery of our software solutions in the future.

***Selling and Marketing***

Selling and marketing expenses consist primarily of salaries (including stock-based compensation) and related expenses for employees in sales and marketing, including commissions and bonuses, advertising, marketing events, corporate communications, expenses, travel costs and allocated overhead. Since our Software segment revenue is delivered and therefore recognized over time, we have experienced a delay between increasing sales and marketing expenses and the recognition of the corresponding revenue. We believe it is important to continue investing in selling and marketing to create brand awareness and lead generation opportunities, to increase market share and to support the resellers added in 2011. Accordingly, we expect selling and marketing expenses to increase in absolute dollars as we continue to support growth initiatives.

***Research and Development***

Research and development expenses consist primarily of the non-capitalized portion of salary (including stock-based compensation) and related expenses for development personnel and costs related to the development of new products, enhancement of existing products, quality assurance, market research, testing, product management and allocated overhead. We expect research and development expenses to increase in absolute dollars in the future as we intend to release new features and functionality on a frequent basis, expand our content offerings, upgrade and extend our service offerings and develop new technologies.

***General and Administrative***

General and administrative expenses consist primarily of salary (including stock-based compensation) and related expenses for management, finance and accounting, legal, information systems and human resources personnel, professional fees, other corporate expenses and allocated overhead. We anticipate that we will incur additional employee salaries and related expenses, professional service fees and other corporate expenses related to the growth of our business and operations in the future. As such, we expect general and administrative expenses to increase in absolute dollars.

**RESULTS OF OPERATIONS**

**Three Months Ended March 31, 2012 and 2011**

The following is a tabular presentation of our condensed consolidated operating results for the three months ended March 31, 2012 compared to our condensed consolidated operating results for the three months ended March 31, 2011 (*in thousands*):

---

## [Table of Contents](#)

	<u>2012</u>	<u>2011</u>	<u>\$ Change</u>	<u>% Change</u>
Net revenue	\$ 25,675	\$ 21,335	4,340	20%
Costs of revenue	14,317	12,488	1,829	15%
Gross profit	11,358	8,847	2,511	
<i>Gross margin</i>	44%	42%		
Operating expenses:				
Selling and marketing	7,020	5,210	1,810	35%
Research and development	1,837	1,400	437	31%
General and administrative	4,094	3,129	965	31%
Total operating expenses	12,951	9,739	3,212	
Loss from operations	(1,593)	(892)	(701)	
Other expense	(141)	(95)	(46)	(48%)
Loss before income taxes	(1,734)	(987)	(747)	
Income tax expense	(15)	(15)	—	
Net loss	<u>\$ (1,749)</u>	<u>\$ (1,002)</u>	<u>\$ (747)</u>	

### *Revenue*

Total revenues increased \$4.3 million or 20% to \$25.7 million during the three months ended March 31, 2012 compared to revenues of \$21.3 million during the same period in 2011. The increase relates to an increase of \$3.0 million in Software segment revenue due primarily to our continued focus and investment in sales and marketing efforts of our all-in-one inContact portfolio of cloud-based software solutions and revenue related to minimum purchase commitments from a reseller. Telecom segment revenue increased \$1.3 million as the increase of Telecom revenue associated with our inContact portfolio customers exceeded the attrition of our Telecom only customers.

### *Costs of revenue and gross margin*

Costs of revenue increased \$1.8 million or 15% to \$14.3 million during the three months ended March 31, 2012 compared to \$12.5 million during the same period of 2011. Our gross margin increased two percentage points to 44% during the three months ended March 31, 2012 from 42% during the three months ended March 31, 2011. The increase in gross profit is primarily driven by reduced costs for providing Telecom revenue offset by increased Software costs of revenue. The increase in Telecom gross margin is due to increased efficiencies in call routing related to a 2011 investment in technology, which resulted in lower Telecom costs. Software gross margin decreased due to greater professional service and customer service personnel costs as we employ more personnel, including higher-paid employees with more developed skill sets to service larger mid-market and enterprise customers and to support resellers ahead of the anticipated revenue. The decrease in Software gross margin is also due to greater costs attributable to international infrastructure and call traffic and an increase in amortization of previously capitalized internal use software costs.

### *Selling and marketing*

Selling and marketing expense increased \$1.8 million or 35% to \$7.0 million during the three months ended March 31, 2012 from \$5.2 million during the same period in 2011. This increase is primarily a result of headcount additions for direct and channel sales employees and higher levels of investment in marketing efforts to create increased awareness of our services as well as increased lead generation efforts for our Software segment.

### *Research and development*

Research and development expense increased \$437,000 or 31% to \$1.8 million during the three months ended March 31, 2012 from \$1.4 million during the same period in 2011. The increase relates to our efforts to expand our content offerings, upgrade and extend our service offerings and develop new technologies.

### *General and administrative*

General and administrative expense increased \$1.0 million or 31% to \$4.1 million during the three months ended March 31, 2012 compared to \$3.1 million during the same period in 2011. The increase is primarily due to increased personnel costs incurred to support our international business expansion.

---

## [Table of Contents](#)

### *Other expense*

Other expense increased \$46,000 to a net other expense of \$141,000 during the three months ended March 31, 2012 from a net other expense of \$95,000 during the same period in 2011. The difference is primarily due to the \$50,000 decrease in fair value of the warrants during the three months ended March 31, 2011 as compared to no change in fair value of warrants during 2012 as the associated warrants were exercised in 2011. Net interest expense also decreased \$38,000 for the first quarter of 2012 compared to the comparable period in 2011 due to a lower outstanding balance on our revolving credit agreement in 2012 as compared to 2011. The decrease in interest expense was offset by a loss on disposal of fixed assets.

### *Income taxes*

Income taxes consist of state income taxes and remained flat for the quarter ended March 31, 2012 as compared to comparable period of 2011.

## **SEGMENT REPORTING**

We operate under two business segments: Software and Telecom. The Software segment includes all monthly recurring revenue related to the delivery of our software applications, plus the associated professional services and setup fees and revenue related to quarterly minimum purchase commitments through the year ended 2013, from a related party reseller. The Telecom segment includes all voice and data long distance services provided to customers.

For segment reporting, we classify operating expenses as either "direct" or "indirect." Direct expense refers to costs attributable solely to either selling and marketing efforts or research and development efforts. Indirect expense refers to costs that management considers to be overhead in running the business. Management evaluates expenditures for both selling and marketing and research and development efforts at the segment level without the allocation of overhead expenses, such as compensation, rent, utilities and depreciation on property and equipment

### **Software Segment Results**

The following is a tabular presentation and comparison of our Software segment unaudited condensed consolidated operating results for the three months ended March 31, 2012 and 2011 (*in thousands*):

	<u>2012</u>	<u>2011</u>	<u>\$ Change</u>	<u>% Change</u>
Net revenue	\$ 12,302	\$ 9,334	2,968	32%
Costs of revenue	5,090	3,590	1,500	42%
Gross profit	7,212	5,744		
<i>Gross margin</i>	59%	62%		
Operating expenses:				
Direct selling and marketing	5,805	4,149	1,656	40%
Direct research and development	1,654	1,239	415	33%
Indirect	3,833	2,844	989	35%
Loss from operations	<u>\$ (4,080)</u>	<u>\$ (2,488)</u>		

The Software segment revenue increased by \$3.0 million or 32% to \$12.3 million during the three months ended March 31, 2012 from \$9.3 million during the same period in 2011. The increase is primarily a result of the selling and marketing efforts we have undertaken to expand the inContact portfolio of software services in the market and revenue related to minimum purchase commitments from a reseller. Software segment revenue includes revenue from professional services of \$559,000 for the first quarter of 2012 compared to \$503,000 for the first quarter of 2011.

Gross margin decreased three percentage points to 59% in 2012 compared to 62% in 2011. The decrease in gross margin is primarily due to greater professional service and customer service personnel costs as we employ more personnel, including higher-paid employees with more developed skill sets to service larger mid-market and enterprise customers and to support resellers ahead of the anticipated revenue. The decrease in Software gross margin is also due to greater costs attributable to international infrastructure and call traffic and an increase in amortization of previously capitalized internal use software costs.

## [Table of Contents](#)

Direct selling and marketing expenses in the Software segment increased \$1.7 million or 40% to \$5.8 million during the three months ended March 31, 2012 compared to \$4.1 million during the same period in 2011. This increase is a result of headcount additions for employees focused on managing and enhancing our partner relationships. We also continue to develop the services provided in the Software segment by investing in research and development. During the three months ended March 31, 2012 we incurred \$1.7 million in direct research and development costs compared to \$1.2 million during the same period in 2011 and have capitalized an additional \$1.4 million of costs incurred during the three months ended March 31, 2012 related to our internally developed software compared to \$1.1 million during the three months ended March 31, 2011. Indirect expenses, which consist of overhead, such as compensation, rent, utilities and depreciation on property and equipment, increased \$1.0 million or 35% to \$3.8 million during the three months ended March 31, 2012 from \$2.8 million for the same period in 2011 due to more indirect costs being allocated to the Software segment with the continued shift in revenue mix from the Telecom segment to the Software segment and the overall increase in indirect expenses.

### Telecom Segment Results

The following is a tabular presentation and comparison of our Telecom segment condensed consolidated operating results for the three months ended March 31, 2012 and 2011 (*in thousands*):

	2012	2011	\$ Change	% Change
Net revenue	\$ 13,373	\$ 12,001	1,372	11%
Costs of revenue	9,227	8,898	329	4%
Gross profit	4,146	3,103		
Gross margin	31%	26%		
Operating expenses:				
Direct selling and marketing	843	754	89	12%
Direct research and development	—	—	—	—
Indirect	816	753	63	8%
Income from operations	\$ 2,487	\$ 1,596		

Telecom segment revenue increased \$1.4 million or 11% to \$13.4 million during three months ended March 31, 2012 from \$12.0 million for the same period in 2011. This increase is associated with the Telecom revenue from our inContact portfolio customers exceeding the attrition of our Telecom only customers. Our costs of revenue increased 4% due to the increase in revenue, but Telecom gross margin increased 5% due to increased efficiencies in call routing related to a 2011 investment in technology, which resulted in lower Telecom costs. Selling and marketing expenses increased \$89,000 or 12% during the three months ended March 31, 2012 as compared to the same period in 2011, due to increased commissions as a result of increased revenue. Indirect expenses, which consist of overhead, such as compensation, rent, utilities and depreciation on property and equipment, increased \$63,000 or 8% during the three months ended March 31, 2012 compared to the same period in 2011 as a result of an overall increase in indirect expenses.

### LIQUIDITY AND CAPITAL RESOURCES

Our principal sources of liquidity are cash and cash equivalents and available borrowings under our revolving credit note, which expires in July 2013. At March 31, 2012, we had \$16.2 million of cash and cash equivalents. In addition to our \$16.2 million of cash and cash equivalents, subject to meeting covenant requirements, we have access to additional available borrowings under our revolving credit note with Zions entered into in July 2009. The available borrowings under the revolving credit note are \$5.5 million at March 31, 2012, based on the maximum available advance amount calculated on the March 20, 2012 borrowing base certificate, resulting in total cash and additional availability under the revolving credit note of \$21.7 million at March 31, 2012. The balance of our revolving credit note at March 31, 2012 was \$3.0 million and the proceeds were used to take advantage of vendor discounts on early payment terms. We had no outstanding balance during most of the first quarter. The outstanding balance ranged from \$0.0 to \$3.0 million during the first quarter of 2012 and we paid the outstanding balance of \$3.0 million in April 2012.

In April 2012, we amended the financial covenants and changed the maturity date of the Revolving Credit Agreement with Zions to July 2014. The amended financial covenants require that the aggregate value of cash, cash equivalents and marketable securities shall not be less than the outstanding balance on the Revolving Credit Agreement plus \$2.5 million, and if at any time the aggregate value is less than the minimum liquidity position, a minimum quarterly EBITDA of \$1.8 million, calculated as of the last day of each calendar quarter, is required.

We experienced a net loss of \$1.7 million during the three months ended March 31, 2012. Significant non-cash expenses affecting operations during the three months ended March 31, 2012 were \$2.1 million of depreciation and amortization and \$509,000 of stock-based compensation. Our operating activities provided cash flows of \$181,000 during the three months ended March 31, 2012.

---

## [Table of Contents](#)

We paid \$208,000 of the \$2.5 million Promissory Note to Zions during the three months ended March 31, 2012. The balance of our Promissory Note was \$2.2 million at March 31, 2012, of which \$833,000 is current. During the three months ended March 31, 2012, we utilized the remaining \$1.3 million of the \$3.0 million equipment leasing facility commitment leasing entered into with Zions Credit Corporation. We paid \$481,000 of capital lease obligations during the three months ended March 31, 2012. The balance of capital lease obligations was \$4.8 million at March 31, 2012, of which \$2.3 million is current.

In April 2012, we entered into a Term Loan with Zions for \$4.0 million to help finance the acquisition of capital assets and the continued development of our international infrastructure. We are allowed to draw up to the total of \$4.0 million through April 30, 2013. Interest, if any, will be paid monthly in arrears, commencing on May 1, 2012, and the principal will be paid in 36 equal monthly installments commencing on June 1, 2013. The interest rate under the Term Loan is 4.5% per annum above the ninety day LIBOR rate, adjusted as of the date of any change in the ninety day LIBOR. The financial covenants are the same as the Revolving Credit Agreement.

We continue to take a proactive approach in managing our operating expenditures and cash flow from operations. We expect to rely on internally generated cash, our revolving credit note, term debt and equipment leasing facilities to finance operations and capital requirements. We believe that existing cash and cash equivalents, cash from operations, available borrowings under our revolving credit note, term debt and equipment leasing facilities will be sufficient to meet our cash requirements during at least the next twelve months.

### **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

A summary of our significant accounting policies and estimates is discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations and in Note 1 of our Annual Report on Form 10-K for the year ended December 31, 2011. The preparation of the financial statements in accordance with U.S. generally accepted accounting principles requires us to make judgments, estimates and assumptions regarding uncertainties that affect the reported amounts of assets and liabilities. Significant areas of uncertainty that require judgments, estimates and assumptions include the accounting for income taxes and other contingencies as well as asset impairment and collectability of accounts receivable. We use historical and other information that we consider to be relevant to make these judgments and estimates. However, actual results may differ from those estimates and assumptions that are used to prepare our financial statements.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Our cash and cash equivalents are invested with high-quality issuers and limit the amount of credit exposure to any one issuer. Due to the short-term nature of the cash equivalents, we believe that we are not subject to any material interest rate risk as it relates to interest income.

Interest rates on our leasing facility and revolving credit facility are variable so market fluctuations in interest rate may increase our interest expense.

### **ITEM 4. CONTROLS AND PROCEDURES**

This Report includes the certifications of our Chief Executive Officer and Chief Financial Officer required by Rule 13a-14 of the Securities Exchange Act of 1934 (the "Exchange Act"). See Exhibits 31.1 and 31.2. This Item 4 includes information concerning the controls and control evaluations referred to in those certifications.

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

Disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) are designed to ensure that information required to be disclosed in reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in rules and forms adopted by the Securities and Exchange Commission, and that such information is accumulated and communicated to management, including the Chief Executive Officer and the Chief Financial Officer, to allow timely decisions regarding required disclosures.

In connection with the preparation of this report, our management, under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, reassessed the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of March 31, 2012.

---

[Table of Contents](#)

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during the first quarter of 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II**

**ITEM 1. LEGAL PROCEEDINGS**

We are the subject of certain legal matters, which we consider incidental to our business activities. It is the opinion of management that the ultimate disposition of these other matters will not have a material impact on our financial position, liquidity or results of operations.

During the quarter ended March 31, 2012, there were no material developments in any pending legal proceedings previously reported. Please see the discussion of legal proceedings under Part I, Item 3 of our 2011 Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 9, 2012.

**ITEM 1A. RISK FACTORS**

The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements made by us, except where such statements are made in connection with an initial public offering. All statements, other than statements of historical fact, which address activities, actions, goals, prospects, or new developments that we expect or anticipate will or may occur in the future, including such things as expansion and growth of our operations and other such matters are forward-looking statements. Any one or a combination of factors could materially affect our operations and financial condition. These factors include competitive pressures, success or failure of marketing programs, changes in pricing and availability of services and products offered to customers, legal and regulatory initiatives affecting software or long distance service, and conditions in the capital markets. Forward-looking statements made by us are based on knowledge of our business and the environment in which we operate as of the date of this report. Because of the factors discussed in the 2011 Annual Report on Form 10-K under Item 1A "Risk Factors," actual results may differ from those in the forward-looking statements.

**ITEM 6. EXHIBITS**

<u>Exhibit No.</u>	<u>Title of Document</u>
10.1	Amended and Restated Loan Agreement between inContact and Zions dated April 30, 2012
10.2	Amended and Restated Promissory Revolving Loan Note issued to Zions dated April 30, 2012
10.3	Promissory Term Loan Note to Zions dated April 30, 2012
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following financial statements, formatted in XBRL: (i) Condensed Consolidated Balance Sheets as of March 31, 2012 and December 31, 2011, (ii) Condensed Consolidated Statements of Operations and Comprehensive Loss for the three months ended March 31, 2012 and 2011 (iii) Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2012 and 2011; and (iv) Notes to the Consolidated Financial Statements, tagged as blocks of text. The information in Exhibit 101 is "furnished" and not "filed," as provided in Rule 402 of Regulation S-T.

---

[Table of Contents](#)

**SIGNATURES**

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

Date: May 4, 2012	<b>inContact, INC.</b> By: <u>/s/ Paul Jarman</u> Paul Jarman Chief Executive Officer
Date: May 4, 2012	By: <u>/s/ Gregory S. Ayers</u> Gregory S. Ayers Principal Financial and Accounting Officer

AMENDED AND RESTATED LOAN AGREEMENT

Between

ZIONS FIRST NATIONAL BANK  
Lender

and

INCONTACT, INC.  
Borrower

Effective Date: April 30, 2012

---

## TABLE OF CONTENTS

	Page
1. Definitions	1
1.1 Definitions	1
2. Loan Description	8
2.1 Term Loan	8
2.2 Revolving Loan	9
2.3 Loan Fee	10
3. Security for Loan	10
3.1 Collateral	10
3.2 Release of Lender as Condition to Lien Termination	10
4. Conditions to Loan Disbursements	10
4.1 Conditions to Initial Loan Disbursements	10
4.2 Conditions to Subsequent Loan Disbursements	11
4.3 No Default, Adverse Change, False or Misleading Statement	12
5. Representations and Warranties	12
5.1 Organization and Qualification	12
5.2 Authorization	12
5.3 No Governmental Approval Necessary	13
5.4 Accuracy of Financial Statements	13
5.5 No Pending or Threatened Litigation	13
5.6 Full and Accurate Disclosure	13
5.7 Compliance with ERISA	13
5.8 Compliance with USA Patriot Act	14
5.9 Compliance with All Other Applicable Law	14
5.10 Environmental Representations and Warranties	14
5.11 Operation of Business	15
5.12 Payment of Taxes	15
6. Borrower's Covenants	15
6.1 Use of Proceeds	15
6.2 Continued Compliance with ERISA	15
6.3 Compliance with USA Patriot Act	16
6.4 Continued Compliance with Applicable Law	16

---

## TABLE OF CONTENTS

	<b>Page</b>	
6.5	Prior Consent for Amendment or Change	16
6.6	Payment of Taxes and Obligations	16
6.7	Financial Statements and Reports	16
6.8	Insurance	17
6.9	Inspection; Collateral Exams	18
6.10	Operation of Business	18
6.11	Maintenance of Records and Properties	18
6.12	Notice of Claims	18
6.13	Environmental Covenants	18
6.14	Financial Covenants	19
6.15	Negative Pledge	20
6.16	Restriction on Debt	20
6.17	Mergers, Consolidations, and Purchase and Sale of Assets	21
6.18	Dividends and Loans	21
6.19	Accounts Receivable	21
6.20	Prior Consent for Name or Organizational Change	21
6.21	Maintenance of Existence	21
6.22	Further Assurances	22
6.23	Bank Accounts	22
6.24	Collateral Access Agreements; Notice of Termination of Leases	22
7.	Default	22
7.1	Events of Default	22
7.2	Cure Periods	23
7.3	No Waiver of Event of Default	23
8.	Remedies	24
8.1	Remedies upon Event of Default	24
8.2	Rights and Remedies Cumulative	24
8.3	No Waiver of Rights	24
9.	General Provisions	24
9.1	Governing Agreement	24
9.2	Borrower's Obligations Cumulative	24

---

## TABLE OF CONTENTS

	<b>Page</b>	
9.3	Payment of Expenses and Attorney's Fees	25
9.4	Right to Perform for Borrower	25
9.5	Assignability	25
9.6	Third Party Beneficiaries	25
9.7	Governing Law	25
9.8	Severability of Invalid Provisions	25
9.9	Interpretation of Loan Agreement	26
9.10	Survival and Binding Effect of Representations, Warranties, and Covenants	26
9.11	Indemnification	26
9.12	Environmental Indemnification	26
9.13	Interest on Expenses and Indemnification, Collateral, Order of Application	27
9.14	Limitation of Consequential Damages	27
9.15	Waiver of Defenses and Release of Claims	27
9.16	Revival Clause	28
9.17	Jury Trial Waiver, Arbitration, and Class Action Waiver	28
9.18	Consent to Utah Jurisdiction and Exclusive Jurisdiction of Utah Courts	30
9.19	Notices	30
9.20	Duplicate Originals; Counterpart Execution	31
9.21	Disclosure of Financial and Other Information	31
9.22	Integrated Agreement and Subsequent Amendment	31
SCHEDULES		
5.5	Litigation	
6.16	Existing Debt	

---

AMENDED AND RESTATED LOAN AGREEMENT

This Amended and Restated Loan Agreement is made and entered into as of April 30, 2012 (the "Effective Date") by and between Zions First National Bank, a national banking association, and inContact, Inc., a Delaware corporation.

Recitals

1. Lender and Borrower entered into a Loan Agreement dated as of July 16, 2009 (as amended from time to time, the "Original Loan Agreement").
2. Lender and Borrower desire to enter into this Amended and Restated Loan Agreement for the purpose of amending and restating the Original Loan Agreement in its entirety.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

1.1 Definitions

Terms defined in the singular shall have the same meaning when used in the plural and vice versa. As used herein, the term:

"Accounting Standards" means (i) in the case of financial statements and reports, conformity with generally accepted accounting principles and fully and fairly representing the financial condition as of the date thereof and the results of operations for the period or periods covered thereby, consistent with other financial statements of that company previously delivered to Lender, and (ii) in the case of calculations, definitions, and covenants, generally accepted accounting principles consistent with those used in the preparation of financial statements of Borrower previously delivered to Lender.

"Administrator" shall have the meaning set forth in Section 9.17 Jury, Trial, Arbitration and Class Action Waiver.

"Arbitration Order" shall have the meaning set forth in Section 9.17 Jury, Trial, Arbitration and Class Action Waiver.

"Banking Business Day" means any day not a Saturday, Sunday, legal holiday in the State of Utah, or day on which national banks in the State of Utah are authorized to close.

"Borrower" means inContact, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors, and, if permitted, assigns.

"Cash" means cash, and cash equivalents acceptable to Lender, calculated on an average balance over the prior 30 days.

---

"Collateral" shall have the meaning set forth in Section 3.1 Collateral.

"Collateral Access Agreement" means any landlord waiver or other agreement, in form and substance satisfactory to Lender, between Lender and any third party (including any bailee, consignee, customs broker or similar Person) in possession of any Collateral or any landlord of Borrower for any real property where any Collateral is located, as the same may be amended, restated, or otherwise modified from time to time.

"Collateral Exam" shall have the meaning set forth in Section 6.9 Inspection; Collateral Exams.

"Collateral Examiner" shall have the meaning set forth in Section 6.9 Inspection; Collateral Exams.

"Debt" means (i) indebtedness or liability for borrowed money; (ii) obligations evidenced by bonds, debentures, notes, or other similar instruments; (iii) obligations for the deferred purchase price of property or services (including trade obligations); (iv) obligations as lessee under capital leases; (v) current liabilities in respect of unfunded vested benefits under Plans covered by ERISA; (vi) obligations to purchase or redeem any Equity Interests if such obligations arise out of or in connection with the sale or issuance of the same or similar Equity Interests; (vii) obligations under letters of credit; (viii) obligations under acceptance facilities; (ix) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; and (x) obligations secured by any mortgage, deed of trust, lien, pledge, or security interest or other charge or encumbrance on property, whether or not the obligations have been assumed.

"Default Notice" shall have the meaning set forth in Section 7.2 Cure Periods.

"Dispute" shall have the meaning set forth in Section 9.17 Jury, Trial, Arbitration and Class Action Waiver.

"Draw Period" shall have the meaning set forth in the Term Loan Note.

"EBITDA" means earnings (excluding extraordinary gains and losses realized other than in the ordinary course of business and excluding the sale or writedown of intangible or capital assets) before Interest Expense, Income Tax Expense, depreciation, amortization, and other non-cash charges, determined in accordance with Accounting Standards.

"Effective Date" shall mean the date the parties intend this Loan Agreement to become binding and enforceable, which is the date stated at the introduction of this Loan Agreement.

"Environmental Condition" shall mean any condition involving or relating to Hazardous Materials and/or the environment affecting the Real Property, whether or not yet discovered, which could or does result in any damage, loss, cost, expense, claim, demand, order, or liability to or against Borrower or Lender by any third party (including, without limitation, any government entity), including, without limitation, any condition resulting from the operation of Borrower's business and/or operations in the vicinity of the Real Property and/or any activity or operation formerly conducted by any person or entity on or off the Real Property.

---

"Environmental Health and Safety Law" shall mean any legal requirement that requires or relates to:

a. advising appropriate authorities, employees, or the public of intended or actual releases of Hazardous Materials, violations of discharge limits or other prohibitions, and of the commencement of activities, such as resource extraction or construction, that do or could have significant impact on the environment;

b. preventing or reducing to acceptable levels the release of Hazardous Materials;

c. reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated;

d. assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the environment when used or disposed of;

e. protecting resources, species, or ecological amenities;

f. use, storage, transportation, sale, or transfer of Hazardous Materials or other potentially harmful substances;

g. cleaning up Hazardous Materials that have been released, preventing the threat of release, and/or paying the costs of such clean up or prevention; or

h. making responsible parties pay for damages done to the health of others or the environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

"Equipment Line" means one or more equipment finance or lease facilities between Borrower and Zions Credit Corporation outstanding from time to time.

"Equity Interests" means shares of capital stock, partnership interests, membership interests or units in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"ERISA Affiliate" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"Event of Default" shall have the meaning set forth in Section 7.1 Events of Default.

"FASB" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"Hazardous Materials" means (i) "hazardous waste" as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), including any future amendments thereto, and regulations promulgated

---

thereunder, and as the term may be defined by any contemporary state counterpart to such act; (ii) "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.), including any future amendments thereto, and regulations promulgated thereunder, and as the term may be defined by any contemporary state counterpart of such act; (iii) asbestos; (iv) polychlorinated biphenyls; (v) underground or above ground storage tanks, whether empty or filled or partially filled with any substance; (vi) any substance the presence of which is or becomes prohibited by any federal, state, or local law, ordinance, rule, or regulation; and (vii) any substance which under any federal, state, or local law, ordinance, rule or regulation requires special handling or notification in its collection, storage, treatment, transportation, use or disposal.

"Income Tax Expense" means expenditures for federal and state income taxes determined in accordance with Accounting Standards.

"Interest Expense" means expenditures for interest determined in accordance with Accounting Standards.

"Lender" means Zions First National Bank, a national banking association, its successors, and assigns.

"Loan" means the loan to be made pursuant to Section 2 Loan Description.

"Loan Agreement" means this agreement, together with any exhibits, amendments, addendums, and modifications.

"Loan Documents" means the Loan Agreement, Promissory Note, Security Documents, all other agreements and documents contemplated by any of the aforesaid documents, and all amendments, modifications, addendums, and replacements, whether presently existing or created in the future.

"Material Adverse Effect" means a material adverse effect on Borrower's financial condition, conduct of its business, or ability to perform its obligations under the Loan Documents.

"Maximum Available Advance Amount" shall have the meaning set forth in Section 2.2e Limitations on Advances.

"Minimum Liquidity Position" shall have the meaning set forth in Section 6.14a Minimum Liquidity Position and Minimum Quarterly EBITDA.

"Multi-Employer Plan" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"Organizational Documents" means, in the case of a corporation, its Articles or Certificate of Incorporation and By-Laws; in the case of a general partnership, its Articles or Certificate of Partnership; in the case of a limited partnership, its Articles or Certificate of Limited Partnership; in the case of a limited liability company, its Articles of Organization or Certificate of Formation and Operating Agreement, Limited Liability Company Agreement, Member Control Agreement or Bylaws, if any; in the case of a limited liability partnership, its Articles of Limited Liability Partnership; and all similar formation or governing documents and all amendments, modifications, and changes to any of the foregoing which are currently in effect.

---

"PBGC" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any limited liability company, any trust, any other legal entity, or any governmental authority.

"Promissory Note" means, individually and collectively, as the context requires, the Term Loan Note and the Revolving Loan Note.

"Qualified Account" means an account receivable of Borrower which meets the following specifications at the time it is created and at all times thereafter until collected in full:

a. The account meets all applicable representations and warranties concerning the Collateral set forth in the Loan Documents.

b. For purposes of this definition of Qualified Accounts only, an account shall be deemed to be created upon performance of the services by Borrower regardless of whether an invoice or bill has been issued, provided that an invoice is sent within 31 days of the date services were performed.

c. The account is due and payable not more than 30 days from the date of the invoice evidencing the account and is not more than 60 days past due, plus accounts due and payable not more than 60 days from the date of the invoice evidencing the account and which are not more than 60 days past due, owing by account debtors which have been approved in writing by Lender, not to exceed an aggregate outstanding amount of \$2,000,000.

d. The account is a bona fide obligation of the account debtor for the amount identified on the records of Borrower and there have been no payments, deductions, credits, payment terms, or other modifications or reductions in the amount owing on such account except (i) discounts allowed in the ordinary course of business which have been disclosed in the Borrowing Base Certificate; and (ii) as otherwise shown on the records of Borrower and disclosed to Lender prior to Lender making any advance based upon the account.

e. There are no defenses or setoffs to payment of the account which can be asserted by way of defense or counterclaim against Borrower or Lender and Borrower has no reason to believe the account will not be timely paid in full by the account debtor.

f. Performance of all services giving rise to the account has been completed and all goods giving rise to the account have been delivered. Borrower has possession of or has submitted to Lender shipping or delivery receipts for all such goods.

g. All services performed and goods sold which give rise to the account have been rendered or sold in compliance with all applicable laws, ordinances, rules and regulations and were performed or sold in the ordinary course of Borrower's business.

---

h. There have been no extensions, modifications, or other agreements relating to payment of the account except as otherwise shown on the records of Borrower and disclosed to Lender prior to Lender making any advance based upon the account.

i. The account debtor is located or authorized to do business within the United States and/or Canada and maintains an office and transacts business in the United States of America and/or Canada or the account is backed by a letter of credit or credit insurance in a form and issued by a bank or insurer, as the case may be, acceptable to Lender.

j. No proceeding has been commenced or petition filed under any bankruptcy or insolvency law by or against the account debtor; no receiver, trustee or custodian has been appointed for any part of the property of the account debtor; and no property of the account debtor has been assigned for the benefit of creditors.

k. If 20% or more of the accounts owing to Borrower by any particular account debtor do not meet the specifications of Paragraph b, above, all accounts owing by such account debtor shall not be Qualified Accounts.

l. The account is not owing by an account debtor for whom the terms of sale by Borrower are cash on delivery ("COD") or considered a cash sale.

m. The Borrower does not owe an account payable to the account debtor which could be set off against the account receivable.

n. If the total of all outstanding accounts owing by any single account debtor equals 10% or more of the total outstanding current accounts owing to Borrower, the amount of accounts owing by that account debtor which equal or exceed this ten percent requirement shall not be Qualified Accounts unless Lender has received satisfactory credit information concerning the account debtor and Lender has agreed in writing to accept the amount in excess of this ten percent requirement as Qualified Accounts.

o. The account is not subject to any type of retainage.

p. The account does not arise from goods placed on consignment, guaranteed sale, or other terms by reason of which the payment by the account debtor may be conditional.

q. The account is not owing by an employee, officer or director of Borrower in amount greater than \$500 per person.

r. The account is not owing by a parent, subsidiary, sister company, or other company related to or an affiliate of Borrower.

s. The account is not owing by the United States government or any agency, department, or division thereof.

t. The account has not been deemed by Lender to be unacceptable.

---

u. The account is not owing by an account debtor deemed by Lender to be unacceptable.

"Real Property" means any and all real property or improvements thereon owned or leased by Borrower or in which Borrower has any other interest of any nature whatsoever.

"Reportable Event" shall have the meaning set forth in Section 5.7 Compliance with ERISA.

"Reseller Agreement" means that certain Master Reseller Agreement between Siemens and Borrower dated June 14, 2011.

"Revolving Loan" means the revolving line of credit in the maximum principal amount of \$8,500,000 made to Borrower by Lender pursuant to Section 2.2 Revolving Loan.

"Revolving Loan Note" means the amended and restated revolving line of credit promissory note to be executed by Borrower pursuant to Section 2.2c Revolving Loan Note and any and all renewals, extensions, modifications, and replacements thereof.

"Security Agreement" means that certain Security Agreement (All Assets) dated July 16, 2009 between Borrower and Lender, and any and all amendments, modifications, and replacements thereof.

"Security Documents" means all security agreements, assignments, pledges, financing statements, deeds of trust, mortgages, and other documents which create or evidence any security interest, assignment, lien or other encumbrance in favor of Lender to secure any or all of the obligations created or contemplated by any of the Loan Documents, and all amendments, modifications, addendums, and replacements, whether presently existing or created in the future.

"Security Transfer Agreement" means that certain Security Transfer Agreement between inContact, Ltd., a limited liability company organized under the laws of England and Wales, which is a wholly owned subsidiary of Borrower, and Siemens, dated as of October 7, 2011.

"Siemens" means Siemens Enterprise Communications, Inc.

"Siemens Loan Agreement" means that certain Loan Agreement dated October 7, 2011 between Borrower, Lender and Siemens, as guarantor, and any and all amendments, modifications and replacements thereof.

"Siemens Loan Documents" means the Siemens Loan Documents as defined in the Siemens Loan Agreement.

"Term Loan" means the term loan in the maximum principal amount of \$4,000,000 made to Borrower by Lender pursuant to Section 2.1 Term Loan.

"Term Loan Note" means the term loan promissory note to be executed by Borrower pursuant to Section 2.1c Term Loan Note and any and all renewals, extensions, modifications, and replacements thereof.

---

"Working Capital" means all total current assets less total current liabilities. Current liabilities include, without limitation, (i) the total outstanding balance under the Revolving Loan, (ii) all obligations payable on demand or within one year after the date on which the determination is made, and (iii) final maturities and sinking fund payments required to be made within one year after the date on which the determination is made, but excluding all such liabilities or obligations which are renewable or extendable at the option of Borrower to a date more than one year from the date of determination.

2. Loan Description

2.1 Term Loan

a. Amount of Term Loan. Upon fulfillment of all conditions precedent set forth in this Loan Agreement, and so long as no Event of Default exists, which has not been waived or timely cured, and no other breach has occurred under the Loan Documents, which has not been waived or timely cured, Lender agrees to loan Borrower the term Loan up to the maximum principal amount of \$4,000,000.

b. Nature and Duration of Term Loan. The Term Loan shall be a multiple advance term loan payable in full upon the date and upon the terms and conditions provided in the Term Loan Note. Amounts borrowed and repaid may not be re-advanced or re-borrowed by Borrower. The right of Borrower to draw funds and the obligation of Lender to advance the proceeds of the Term Loan Note to Borrower shall not accrue, in the case of each requested advance, until all of the conditions set forth in Section 4 Conditions to Loan Disbursements have been fully satisfied and shall exist only during the Draw Period. Upon the maturity of the Term Loan Note any and all amounts owing to Lender pursuant to the Term Loan Note and this Loan Agreement shall thereupon be due and payable in full unless the Term Loan Note is renewed or extended by Lender in which case such termination shall occur upon the maturity of the final renewal or extension of the Term Loan Note.

c. Term Loan Note. The Loan shall be evidenced by the Term Loan Note. The Term Loan Note shall be executed and delivered to Lender upon execution and delivery of this Loan Agreement. Proceeds of the Term Loan Note may be disbursed by Lender by wire transfer.

Unless Lender agrees otherwise in writing, Borrower shall execute the necessary documents and arrange for all payments of principal, and interest hereunder to be paid by automatic transfer of funds from the account of Borrower with a designated financial institution acceptable to Lender. Lender is further authorized to debit, for the purpose of making any payment of principal, interest, non-use fees and letter of credit issuance fees hereunder, (i) any account of Borrower held by Lender, or (ii) the Revolving Loan.

d. Notice and Manner of Borrowing. Requests for advances on the Revolving Loan Note shall be given in writing or orally no later than 12:00 p.m. Mountain Time of the Banking Business Day on which the advance is to be made.

---

## 2.2 Revolving Loan

a. Amount of Revolving Loan. Upon fulfillment of all conditions precedent set forth in this Loan Agreement, and so long as no Event of Default exists, and no other breach has occurred under the Loan Documents, Lender agrees to loan Borrower \$8,500,000.

b. Nature and Duration of Loan. The Revolving Loan shall be a revolving loan payable in full upon the date and upon the terms and conditions provided in the Revolving Loan Note. Lender and Borrower intend the Revolving Loan to be in the nature of a line of credit under which Borrower may repeatedly draw funds on a revolving basis in accordance with the terms and conditions of this Loan Agreement and the Revolving Loan Note. The right of Borrower to draw funds and the obligation of Lender to advance funds shall not accrue until all of the conditions set forth in Section 4 Conditions to Loan Disbursements have been fully satisfied, and shall terminate: (i) upon occurrence and during the continuation of an Event of Default or event which, with the passage of time or giving of notice or both, would constitute an Event of Default, or (ii) upon maturity of the Revolving Loan Note, unless the Revolving Loan Note is renewed or extended by Lender in which case such termination shall occur upon the maturity of the final renewal or extension of the Revolving Loan Note. Upon such termination, any and all amounts owing to Lender pursuant to the Revolving Loan Note and this Loan Agreement shall thereupon be due and payable in full.

c. Revolving Loan Note. The Loan shall be evidenced by the Revolving Loan Note. The Revolving Loan Note shall be executed and delivered to Lender upon execution and delivery of this Loan Agreement. Proceeds of the Revolving Loan Note may be disbursed by Lender by wire transfer.

Unless Lender agrees otherwise in writing, Borrower shall execute the necessary documents and arrange for all payments of principal, and interest hereunder to be paid by automatic transfer of funds from the account of Borrower with a designated financial institution acceptable to Lender. Lender is further authorized to debit, for the purpose of making any payment of principal, interest, non-use fees and letter of credit issuance fees hereunder, (i) any account of Borrower held by Lender, or (ii) the Loan.

d. Notice and Manner of Borrowing. Requests for advances on the Revolving Loan Note shall be given in writing or orally no later than 12:00 p.m. Mountain Time on the Banking Business Day on which the advance is to be made so long as Lender has received a current borrowing base certificate pursuant to Section 6.7e Financial Statements and Reports at least one Banking Business Day in advance of such request.

e. Limitations on Advances. Notwithstanding anything to the contrary in the Loan Documents, no advances shall be made on the Loan under the Revolving Loan Note if, after making the requested advance, the total principal amount of all advances outstanding will exceed the aggregate of (i) 85% of the Qualified Accounts that have been billed to customers, so long as Borrower has at least \$3,500,000 of Cash on hand and (ii) 65% of the Qualified Accounts that have not yet been billed to customers ("Maximum Available Advance Amount"). If Borrower's Cash falls below the above-stated amounts, the advance rate on Qualified Accounts that have been billed to customers shall be reduced to 75% of the billed Qualified Accounts.

---

Borrower will at all times maintain Qualified Accounts so that the total, aggregate, principal amount of all advances at any time outstanding and unpaid shall be in compliance with this formula. If at any time the total, aggregate, principal amount of all such advances outstanding and unpaid exceeds the amount allowable under this formula, Borrower shall immediately make payment to Lender in a sufficient amount to bring the amount of such advances back into compliance.

### 2.3 Loan Fee

Upon execution and delivery of this Loan Agreement, and within 30 days of each anniversary of the Effective Date, Borrower shall pay to Lender a loan fee of \$21,250. No portion of such fee shall be refunded in the event of early termination of this Loan Agreement or any termination or reduction of the right of Borrower to request advances under this Loan Agreement. Lender is authorized and directed, upon execution of this Loan Agreement and fulfillment of all conditions precedent hereunder, to disburse a sufficient amount of the Loan proceeds to pay the loan fee in full.

## 3. Security for Loan

### 3.1 Collateral

The Loan, Promissory Note, and all obligations of Borrower under the Loan Documents shall be secured by such collateral as is provided in the Security Documents (the "Collateral"), which shall include, without limitation, a security interest in all assets of Borrower, as more particularly described in the Security Documents, except that the equipment purchased by Borrower to fulfill its obligations under the Reseller Agreement (limited to the equipment listed on Schedule 2 of the Security Transfer Agreement) is expressly excluded from the Collateral.

### 3.2 Release of Lender as Condition to Lien Termination

In recognition of Lender's right to have all its attorneys fees and expenses incurred in connection with this Loan Agreement secured by the Collateral, notwithstanding payment in full of the Loan and all other obligations secured by the Collateral, Lender shall not be required to release, reconvey, or terminate any Security Document unless and until Borrower has executed and delivered to Lender general releases in form and substance satisfactory to Lender.

## 4. Conditions to Loan Disbursements

### 4.1 Conditions to Initial Loan Disbursements

Lender's obligation to disburse any of the Loan on the Effective Date is expressly subject to, and shall not arise until all of the conditions set forth below have been satisfied. All of the documents referred to below must be in a form and substance acceptable to Lender.

a. All of the Loan Documents and all other documents contemplated to be delivered to Lender prior to funding have been fully executed and delivered to Lender.

---

b. All of the documents contemplated by the Loan Documents which require filing or recording have been properly filed and recorded so that all of the liens and security interests granted to Lender in connection with the Loan will be properly created and perfected, and Lender shall have a first priority security interest on all assets of Borrower, except as set forth in Section 3.1 Collateral hereto.

c. All other conditions precedent provided in or contemplated by the Loan Documents or any other agreement or document have been performed.

d. As of the Effective Date, the following shall be true and correct: (i) all representations and warranties made by Borrower in the Loan Documents are true and correct in all material respects as of the date of such disbursement; and (ii) no Event of Default has occurred and no conditions exist and no event has occurred, which, with the passage of time or the giving of notice, or both, would constitute an Event of Default.

e. Lender has received certificates of insurance pursuant to Section 6.8 Insurance acceptable to Lender.

f. Lender shall have received the loan fee referenced in Section 2.3 Loan Fee and all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable legal fees and expenses of Lender's counsel, and all reasonable out of pocket expenses required to be reimbursed or paid by Borrower under the Loan Documents.

All conditions precedent set forth in this Loan Agreement and any of the Loan Documents are for the sole benefit of Lender and may be waived unilaterally by Lender.

#### 4.2 Conditions to Subsequent Loan Disbursements

After the Effective Date, Lender's obligation to make any disbursements of the Term Loan (through the Draw Period) or the Revolving Loan, and to issue, extend or renew any letter of credit, shall be subject to the satisfaction or waiver of the following conditions precedent.

a. The outstanding principal balance on the Revolving Loan Note (including amounts frozen for outstanding letters of credit) plus the amount of any requested disbursement thereunder shall not exceed the Maximum Available Advance Amount.

b. All other conditions precedent for subsequent disbursements provided in or contemplated by the Loan Documents or any other agreement or document have been performed, including, without limitation, current borrowing base certificate provided to Lender pursuant to Section 6.7e Financial Statements and Reports.

c. At the time of each such disbursement of the Revolving Loan or Term Loan, as applicable, and also immediately after giving effect thereto, (i) there shall exist no Event of Default and no other event shall have occurred and continue to exist which, with the passage of time or giving of notice, or both, would constitute an Event of Default, and (ii) all representations and warranties of Borrower contained herein or in the other Loan Documents shall be true and correct in all material respects (except that to the extent any such representation or warranty contains any materiality qualifier, such

---

representation or warranty shall be true and correct in all respects) with the same effect as though such representations and warranties had been made on and as of the date of such disbursement of the Revolving Loan or Term Loan, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects (except that if any such representation or warranty contains any materiality qualifier, such representation or warranty shall be true and correct in all respects) as of such earlier date.

d. The acceptance of the benefits of each disbursement of the Revolving Loan or Term Loan shall constitute a representation and warranty by Borrower to Lender that all of the applicable conditions specified in this Section 4.2 Conditions to Subsequent Loan Disbursements have been satisfied as of the times referred to in this Section.

#### 4.3 No Default, Adverse Change, False or Misleading Statement

Lender's obligation to advance any funds at any time pursuant to this Loan Agreement and the Promissory Note shall, at Lender's sole discretion, terminate upon the occurrence of any Event of Default, any event which could have a Material Adverse Effect, or upon the determination by Lender that any of Borrower's representations made in any of the Loan Documents were false or materially misleading when made. Upon the exercise of such discretion, Lender shall be relieved of all further obligations under the Loan Documents.

### 5. Representations and Warranties

Borrower represents and warrants to Lender as follows:

#### 5.1 Organization and Qualification

Borrower is a corporation duly organized and existing in good standing under the laws of the State of Delaware, and Borrower is qualified and in good standing as a foreign corporation in the State of Utah. Borrower is duly qualified to do business in each jurisdiction where the conduct of its business requires qualification.

Borrower has the full power and authority to own its property and to conduct the business in which it engages and to enter into and perform its obligations under the Loan Documents. Borrower has delivered to Lender or Lender's counsel accurate and complete copies of Borrower's Organizational Documents which are operative and in effect as of the Effective Date.

#### 5.2 Authorization

The execution, delivery, and performance by Borrower of the Loan Documents has been duly authorized by all necessary action on the part of Borrower and are not inconsistent with Borrower's Organizational Documents or any resolution of the Board of Directors of Borrower, do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract, or other instrument to which Borrower is a party or by which it is bound, and that upon execution and delivery thereof, the Loan Documents will constitute legal, valid, and binding agreements and obligations of Borrower, enforceable in accordance with their respective terms.

---

5.3 No Governmental Approval Necessary

No consent by, approval of, giving of notice to, registration with, or taking of any other action with respect to or by any federal, state, or local governmental authority or organization is required for Borrower's execution, delivery, or performance of the Loan Documents.

5.4 Accuracy of Financial Statements

All of Borrower's audited financial statements heretofore delivered to Lender have been prepared in accordance with Accounting Standards.

All of Borrower's unaudited financial statements heretofore delivered to Lender fully and fairly represent Borrower's financial condition as of the date thereof and the results of Borrower's operations for the period or periods covered thereby and are consistent with other financial statements previously delivered to Lender.

Since the dates of the most recent audited and unaudited financial statements delivered to Lender, there has been no event which would have a Material Adverse Effect on its financial condition.

All of Borrower's pro forma financial statements heretofore delivered to Lender have been prepared consistently with Borrower's actual financial statements and fully and fairly represent Borrower's anticipated financial condition and the anticipated results of Borrower's operation for the period or periods covered thereby.

5.5 No Pending or Threatened Litigation

Except as set forth on Schedule 5.5 attached hereto, there are no actions, suits, or proceedings pending or, to Borrower's knowledge, threatened against or affecting Borrower in any court or before any governmental commission, board, or authority which, if adversely determined, would have a Material Adverse Effect.

5.6 Full and Accurate Disclosure

This Loan Agreement, the financial statements referred to herein, any loan application submitted to Lender, and all other statements furnished by Borrower to Lender in connection herewith contain no untrue statement of a material fact and omit no material fact necessary to make the statements contained therein or herein not misleading. Borrower represents and warrants that it has not failed to disclose in writing to Lender any fact that would have a Material Adverse Effect.

5.7 Compliance with ERISA

Borrower is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, and the regulations and published interpretations thereunder. Neither a Reportable Event as set forth in Section 4043 of ERISA or the regulations thereunder ("Reportable Event") nor a prohibited transaction as set forth in Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended, has occurred and is continuing with respect to any employee benefit plan established,

---

maintained, or to which contributions have been made by Borrower or any trade or business (whether or not incorporated) which together with Borrower would be treated as a single employer under Section 4001 of ERISA ("ERISA Affiliate") for its employees which is covered by Title I or Title IV of ERISA ("Plan"); no notice of intent to terminate a Plan has been filed nor has any Plan been terminated which is subject to Title IV of ERISA; no circumstances exist that constitute grounds under Section 4042 of ERISA entitling the Pension Benefit Guaranty Corporation ("PBGC") to institute proceedings to terminate, or appoint a trustee to administer a Plan, nor has the PBGC instituted any such proceedings; neither Borrower nor any ERISA Affiliate has completely or partially withdrawn under Section 4201 or 4204 of ERISA from any Plan described in Section 4001(a)(3) of ERISA which covers employees of Borrower or any ERISA Affiliate ("Multi-employer Plan"); Borrower and each ERISA Affiliate has met its minimum funding requirements under ERISA with respect to all of its Plans and the present fair market value of all Plan assets equals or exceeds the present value of all vested benefits under or all claims reasonably anticipated against each Plan, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA and the regulations thereunder and the applicable statements of the Financial Accounting Standards Board ("FASB") for calculating the potential liability of Borrower or any ERISA Affiliate under any Plan; neither Borrower nor any ERISA Affiliate has incurred any liability to the PBGC (except payment of premiums, which is current) under ERISA.

Borrower, each ERISA Affiliate and each group health plan (as defined in ERISA Section 733) sponsored by Borrower and each ERISA Affiliate, or in which Borrower or any ERISA Affiliate is a participating employer, are in compliance with, have satisfied and continue to satisfy (to the extent applicable) all requirements for continuation of group health coverage under Section 4980B of the Internal Revenue Code and Sections 601 et seq. of ERISA, and are in compliance with, have satisfied and continue to satisfy Part 7 of ERISA and all corresponding and similar state laws relating to portability, access and renewability of group health benefits and other requirements included in Part 7.

#### 5.8 Compliance with USA Patriot Act

Borrower is not subject to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower.

#### 5.9 Compliance with All Other Applicable Law

Borrower has complied in all material respects with all applicable statutes, rules, regulations, orders, and restrictions of any domestic or foreign government, or any instrumentality or agency thereof having jurisdiction over the conduct of Borrower's business or the ownership of its properties, which may have a Material Adverse Effect.

#### 5.10 Environmental Representations and Warranties

Except as Lender has been otherwise previously advised by Borrower to Borrower's knowledge after due inquiry and investigation, no Hazardous Materials are now located on, in, or under the Real Property, nor to Borrower's knowledge after due inquiry and investigation is there any Environmental Condition on, in, or under the Real Property and neither Borrower nor,

---

to Borrower's knowledge, after due inquiry and investigation, any other person has ever caused or permitted any Hazardous Materials to be placed, held, used, stored, released, generated, located or disposed of on, in or under the Real Property, or any part thereof, nor caused or allowed an Environmental Condition to exist on, in or under the Real Property, except in the ordinary course of Borrower's business under conditions that are generally recognized to be appropriate and safe and that are in compliance with all applicable Environmental Health and Safety Laws. Borrower further represents and warrants that to Borrower's knowledge after due inquiry and investigation no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials and/or an Environmental Condition is proposed, threatened, anticipated or in existence with respect to the Real Property.

#### 5.11 Operation of Business

Borrower possesses all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted, and Borrower is not in violation of any valid rights of others with respect to any of the foregoing.

#### 5.12 Payment of Taxes

Borrower has filed all tax returns (federal, state, and local) required to be filed, or has filed timely return extensions, and has paid all taxes, assessments, and governmental charges and levies, including interest and penalties, on Borrower's assets, business and income, except such as are being contested in good faith by proper proceedings and as to which adequate reserves are maintained.

### 6. Borrower's Covenants

Borrower makes the following agreements and covenants, which shall continue so long as this Loan Agreement is in effect and so long as Borrower is indebted to Lender for obligations arising out of, identified in, or contemplated by this Loan Agreement.

#### 6.1 Use of Proceeds

Borrower shall use the proceeds of the Loan solely for the purposes identified to Lender in applying for the Loan.

Borrower shall not, directly or indirectly, use any of the proceeds of the Loan for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or to extend credit to any person or entity for the purpose of purchasing or carrying any such margin stock or for any purpose which violates, or is inconsistent with, Regulation X of said Board of Governors, or for any other purpose not permitted by Section 7 of the Securities Exchange Act of 1934, as amended, or by any of the rules and regulations respecting the extension of credit promulgated thereunder.

#### 6.2 Continued Compliance with ERISA

Borrower covenants that, with respect to all Plans (as defined in Section 5.7 Compliance with ERISA) which Borrower or any ERISA Affiliate currently maintains or to which Borrower

---

or any ERISA Affiliate is a sponsoring or participating employer, fiduciary, party in interest or disqualified person or which Borrower or any ERISA Affiliate may hereafter adopt, Borrower and each ERISA Affiliate shall continue to comply with all applicable provisions of the Internal Revenue Code and ERISA and with all representations made in Section 5.7 Compliance with ERISA, including, without limitation, conformance with all notice and reporting requirements, funding standards, prohibited transaction rules, multi-employer plan rules, necessary reserve requirements, and health care continuation, coverage and portability requirements.

#### 6.3 Compliance with USA Patriot Act

Borrower shall (a) not be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, and (b) provide documentary and other evidence of Borrower's identity as may be requested by Lender at any time to enable Lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

#### 6.4 Continued Compliance with Applicable Law

Borrower shall conduct its business in a lawful manner and in material compliance with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders; shall maintain in good standing all licenses and organizational or other qualifications reasonably necessary to its business and existence; and shall not engage in any business not authorized by and not in accordance with its Organizational Documents and other governing documents.

#### 6.5 Prior Consent for Amendment or Change

Borrower shall not modify, amend, waive, or otherwise alter, or fail to enforce, its Organizational Documents or other governing documents without Lender's prior written consent.

#### 6.6 Payment of Taxes and Obligations

Borrower shall pay when due all taxes, assessments, and governmental charges and levies on Borrower's assets, business, and income, and all material obligations of Borrower of whatever nature, except such as are being contested in good faith by proper proceedings and as to which adequate reserves are maintained.

#### 6.7 Financial Statements and Reports

Borrower shall provide Lender with such financial statements and reports as Lender may reasonably request. Audited financial statements and reports shall be prepared in accordance with Accounting Standards. Unaudited financial statements and reports shall fully and fairly represent Borrower's financial condition as of the date thereof and the results of Borrower's operations for the period or periods covered thereby and shall be consistent with other financial statements previously delivered to Lender.

---

Until requested otherwise by Lender, Borrower shall provide the following financial statements and reports to Lender:

a. Annual audited financial statements for each fiscal year of Borrower in a form acceptable to Lender, to be delivered to Lender within 120 days of the end of the fiscal year. The annual financial statements shall include a certification by the chief financial officer and chief executive officer of Borrower that the annual financial statements fully and fairly represent Borrower's financial condition as of the date thereof and the results of operations for the period covered thereby and are consistent with other financial statements previously delivered to Lender.

b. Borrower's annual forecast in a form acceptable to Lender to be delivered to Lender within 60 days of the end of the fiscal year.

c. Quarterly financial statements for each fiscal quarter of Borrower in a form acceptable to Lender, to be delivered to Lender within 45 days of the end of the fiscal quarter. The quarterly financial statements shall include a certification by the chief financial officer or chief executive officer of Borrower that the quarterly financial statements fully and fairly represent Borrower's financial condition as of the date thereof and the results of operations for the period covered thereby and are consistent with other financial statements previously delivered to Lender.

d. Together with the delivery of each financial statement a compliance certificate certifying that Borrower is in compliance with all terms and conditions of the Loan Agreement, including compliance with the financial covenants provided in Section 6.14 Financial Covenants. The compliance certificate shall include the data and calculations supporting all financial covenants, whether in compliance or not, and shall be signed by the chief executive officer or chief financial officer of Borrower.

e. Borrower shall submit to Lender a borrowing base certificate as of the 5th and 20th day of each month in a form provided by or acceptable to Lender demonstrating that the outstanding balance on the Revolving Loan is in compliance with the terms and conditions of this Loan Agreement. The borrowing base certificate shall be due within five days after the 5th and 20th day of each month. The borrowing base certificates shall include an accounts receivable aging report, in a form acceptable to Lender. However, Borrower is not required to submit a borrowing base certificate if the outstanding balance on the Loan is \$0. If Borrower elects not to submit a borrowing base certificate because the outstanding balance on the Revolving Loan is \$0, prior to receiving any further advances on the Revolving Loan and at least one day before the advance on the Revolving Loan is to be made, Borrower must submit to Lender a borrowing base certificate demonstrating that the outstanding balance on the Revolving Loan after the proposed advance is in compliance with the terms and conditions of this Loan Agreement.

#### 6.8 Insurance

Borrower shall maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof. Lender shall be named as an additional insured and as a loss payee on all property and casualty insurance policies, and all property and casualty insurance policies shall provide that the policies may not be cancelled without at least 10 days prior written notice to Lender.

---

#### 6.9 Inspection; Collateral Exams

Borrower shall at any reasonable time and from time to time permit Lender or any representative or agent of Lender (collectively, the "Collateral Examiner") the opportunity to examine and evaluate the Collateral, to audit the Collateral perfection procedures, and to conduct an appraisal of such Collateral, which appraisal shall be conducted by an appraiser acceptable to Lender, and to examine, inspect, audit and make copies of and abstracts from the records and books of account of, and visit and inspect the properties and assets of, Borrower, and to discuss the affairs, finances, and accounts of Borrower with any of Borrower's officers and directors and with Borrower's independent accountants, customers, vendors or suppliers or any other party reasonably deemed necessary by Lender (collectively, the "Collateral Exam"), subject to applicable law and regulations governing disclosure of Borrower's material non-public information. As long as there is no continuing Event of Default, Borrower shall pay all reasonable costs and expenses of no more than one annual Collateral Exam. Borrower shall pay all reasonable costs and expenses of any Collateral Exams performed after the occurrence and during the continuation of an Event of Default.

#### 6.10 Operation of Business

Borrower shall maintain all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, necessary or advisable to conduct its business and Borrower shall not violate any valid rights of others with respect to any of the foregoing. Borrower shall continue to engage in a business of the same general type as now conducted.

#### 6.11 Maintenance of Records and Properties

Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with Accounting Standards. Borrower shall maintain, keep and preserve all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

#### 6.12 Notice of Claims

Borrower shall promptly notify Lender in writing of all actions, suits or proceedings filed or threatened against or affecting Borrower in any court or before any governmental commission, board, or authority which, if adversely determined, would have a Material Adverse Effect.

#### 6.13 Environmental Covenants

Borrower covenants that it will:

a. Not permit the presence, use, disposal, storage or release of any Hazardous Materials on, in, or under the Real Property, except in the ordinary course of Borrower's business under conditions that are generally recognized to be appropriate and safe and that are in compliance with all applicable Environmental Health and Safety Laws.

---

b. Not permit any substance, activity or Environmental Condition on, in, under or affecting the Real Property which is in violation of any Environmental Health and Safety Laws.

c. Comply in all material respects with the provisions of all Environmental Health and Safety Laws.

d. Notify Lender promptly of any discharge of Hazardous Materials, Environmental Condition, or environmental complaint or notice received from any governmental agency or any other party.

e. Upon any discharge of Hazardous Materials or upon the occurrence of any Environmental Condition, immediately contain and remediate the same in compliance with all Environmental Health and Safety Laws, promptly pay any fine or penalty assessed in connection therewith, and immediately notify Lender of such events.

f. Permit Lender with reasonable time and notice to inspect the Real Property for Hazardous Materials and Environmental Conditions, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto.

g. From time to time upon Lender's request, and at Borrower's expense, provide a report (including all validated and unvalidated data generated for such reports) of a qualified independent environmental engineer acceptable to Lender, satisfactory to Lender in scope, form, and content, and provide to Lender such other and further assurances reasonably satisfactory to Lender, that Borrower is in compliance with these covenants concerning Hazardous Materials and Environmental Conditions, and that any past violation thereof has been corrected in compliance with all applicable Environmental Health and Safety Laws.

h. Immediately advise Lender of any additional, supplemental, new, or other information concerning any Hazardous Materials or Environmental Conditions relating to the Real Property.

#### 6.14 Financial Covenants

Except as otherwise provided herein, each of the accounting terms used in this Section 6.14 shall have the meanings used in accordance with Accounting Standards.

a. Minimum Liquidity Position and Minimum Quarterly EBITDA. Borrower shall at all times maintain cash, cash equivalents, and marketable securities having an aggregate value, as determined in accordance with Accounting Standards and as reasonably acceptable to Lender, of not less than the outstanding balance on the Revolving Loan plus \$2,500,000 ("Minimum Liquidity Position"). If at any time Borrower fails to maintain the Minimum Liquidity Position, Borrower shall maintain a minimum quarterly EBITDA of not less than \$1,800,000, measured as of the last day of each quarter.

---

b. Minimum Working Capital. Borrower shall at all times maintain minimum Working Capital of not less than \$1,000,000, measured as of the last day of each quarter.

6.15 Negative Pledge

Borrower will not create, incur, assume, or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, hypothecation, assignment, deposit arrangement, or other preferential arrangement, charge, or encumbrance (including, without limitation, any conditional sale, other title retention agreement, or finance lease) of any nature, upon or with respect to any of its properties or assets, now owned or hereafter acquired, or sign or file, under the Uniform Commercial Code of any jurisdiction, a financing statement under which Borrower appears as debtor, or sign any security agreement authorizing any secured party thereunder to file such financing statement, except (a) those contemplated by this Loan Agreement and the Siemens Loan Agreement; (b) liens arising in the ordinary course of business (such as liens of carriers, warehousemen, mechanics, and materialmen) and other similar liens imposed by law for sums not yet due and payable or, if due and payable, those being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained in accordance with Accounting Standards; (c) easements, rights of way, restrictions, minor defects or irregularities in title or other similar liens which alone or in the aggregate do not interfere in any material way with the ordinary conduct of the business of Borrower; (d) liens for taxes and assessments not yet due and payable or, if due and payable, those being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained in accordance with Accounting Standards; (e) anti-assignment provisions included in any Qualified Account, Chattel Paper, General Intangible or promissory note in which Borrower has any right, title or interest; (f) the Equipment Line; and (g) liens arising under the Security Transfer Agreement.

6.16 Restriction on Debt

Borrower shall not create, incur, assume, or suffer to exist any debt except as permitted by this Section 6.16.

Permitted exceptions to this covenant are: (i) Debt contemplated by this Loan Agreement and the Siemens Loan Agreement; (ii) accounts payable to trade creditors for goods or services which are not aged more than 90 days from the billing date and current operating liabilities (other than for borrowed money) which are not more than 90 days past due, in each case incurred in the ordinary course of business, as presently conducted, and paid within the specified time, unless contested in good faith and by appropriate proceedings; (iii) Debt incurred under the Equipment Line (iv) Debt due not to exceed an outstanding principal amount of \$200,000 per debt and not to exceed an aggregate, outstanding principal amount of \$500,000; (v) Debt existing on the Effective Date and set forth on Schedule 6.16 hereto; (vi) Debt secured by liens described in clause (f) of the definition of Permitted Encumbrances in the Security Agreement; (vii) extensions, refinancings, modifications, amendments and restatements of any items of the foregoing clauses, provided that the principal amount thereof is not increased and the terms thereof are not modified or impose more burdensome terms upon Borrower; and (viii) subordinated Debt, which is approved in advance in writing by Lender, and (ix) recourse of Siemens against Borrower pursuant to the Security Transfer Agreement.

---

6.17 Mergers, Consolidations, and Purchase and Sale of Assets

Borrower shall not wind up, liquidate, or dissolve itself, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of (whether in one transaction or a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any person or entity, or acquire all or substantially all of the assets or the business of any person or entity.

6.18 Dividends and Loans

Borrower shall not (i) declare or pay any dividends, (ii) purchase, redeem, retire or otherwise acquire for value any of its capital stock or equity interests now or hereafter outstanding, (iii) make any distribution of assets to its stockholders, investors, or equity holders, whether in cash, assets, or in obligations of Borrower, (iv) allocate or otherwise set apart any sum for the payment of any dividend or distribution on, or for the purchase, redemption, or retirement of any shares of its capital stock or equity interests, or (v) make any other distribution by reduction of capital or otherwise in respect of any shares of its capital stock or equity interests.

Borrower shall not make any loans or pay any advances of any nature whatsoever to any person or entity, except advances in the ordinary course of business to vendors, suppliers, and contractors.

6.19 Accounts Receivable

Borrower shall promptly notify Lender in writing upon any Qualified Account ceasing to be or being determined to have been incorrectly identified as a Qualified Account.

Borrower shall provide Lender with such reports and records concerning accounts receivable and accounts payable as Lender may reasonably request.

Borrower hereby authorizes Lender to verify Borrower's accounts through written or verbal verification methods at the discretion of Lender.

6.20 Prior Consent for Name or Organizational Change

Borrower shall not change its name or convert to a different form of legal entity without Lender's prior written consent.

6.21 Maintenance of Existence

Borrower shall maintain and preserve (a) its existence and good standing in the jurisdiction of its organization, and (b) its qualification and good standing in each jurisdiction where the nature of its business makes such qualification necessary unless such failure under this clause (b) would not reasonably be expected to lead to a Material Adverse Effect.

---

6.22 Further Assurances

Borrower shall take such actions as Lender may reasonably request from time to time to ensure that the obligations of Borrower hereunder and under the other Loan Documents are secured by the Collateral.

6.23 Bank Accounts

As a factor in determining the interest rate charged by Lender on the Loan and to provide additional security for Lender, Borrower shall maintain its principal depository and substantially all of its payment accounts with Lender, unless Borrower has obtained the prior written approval of Lender, and shall notify Lender of the existence of any accounts not transferred to Lender.

6.24 Collateral Access Agreements; Notice of Termination of Leases

Except with the prior written consent of Lender, after the Effective Date, Borrower shall not enter into any new lease (whether oral or written) for real property where Collateral is stored or located unless and until a Collateral Access Agreement shall first have been obtained with respect to such location.

Borrower shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or third party warehouse where any Collateral is or may be located. Borrower agrees to give Lender written notice of any termination of or abandonment or surrender under such leases and other agreements within three Banking Business Days prior to the same.

7. Default

7.1 Events of Default

Time is of the essence of this Loan Agreement. The occurrence of any of the following events shall constitute a default under this Loan Agreement and under the Loan Documents and shall be termed an "Event of Default":

- a. Borrower fails in the payment or performance of any obligation, covenant, agreement, or liability created by any of the Loan Documents.
- b. Any representation, warranty, or financial statement made by or on behalf of Borrower in any of the Loan Documents, or any document contemplated by the Loan Documents, is materially false or materially misleading.
- c. Default occurs or Borrower fails to comply with any term in any of the Loan Documents.
- d. Any indebtedness of Borrower under any note, indenture, contract, agreement, or undertaking is accelerated.
- e. Default or an event which, with the passage of time or the giving of notice or both, would constitute a default, by Borrower, occurs on any note, indenture, contract, agreement, or undertaking.

---

f. Borrower is dissolved or substantially ceases business operations.

g. A receiver, trustee, or custodian is appointed for any part of Borrower's property, or any part of Borrower's property is assigned for the benefit of creditors.

h. Any proceeding is commenced or petition filed under any bankruptcy or insolvency law by or against Borrower.

i. Any judgment or regulatory fine is entered against Borrower which may materially affect Borrower.

j. Borrower becomes insolvent or fails to pay its debts as they mature.

k. Any change occurs in Borrower's condition or any event occurs which may have a Material Adverse Effect.

l. Any default under the Equipment Line.

m. Any default occurs under the Reseller Agreement or the Security Transfer Agreement.

n. Any default occurs under the Siemens Loan Documents.

## 7.2 Cure Periods

For any Event of Default other than an Event of Default arising from the failure of Borrower to make a payment to Lender when due, Borrower may cure such default within ten Banking Business Days of the receipt of written notice from Lender of such default (a "Default Notice"), or if it is commercially unreasonable to cure such default within ten Banking Business Days and with Lender's consent, within such longer period of time as is reasonably necessary to accomplish the cure, provided (i) Borrower promptly commences such cure upon receipt of the Default Notice, (ii) such cure period does not exceed 90 days under any circumstances, and (iii) Borrower shall pay to Lender all of Lender's reasonable costs to confirm that the Event of Default has been cured. If an Event of Default is cured, provided Borrower immediately pays all of Lenders reasonable enforcement costs, including attorneys' fees, through the date Lender received notice of the cure, Lender shall cease its enforcement actions and remedies, including any acceleration remedy provided herein or elsewhere in the Loan Documents, and the parties shall proceed under the Loan Documents as if no default has occurred. Notwithstanding Lender's obligation to terminate its remedies upon a cure as set forth above, Lender shall have no obligation to suspend or delay its enforcement of its rights and remedies under the Loan Documents and at law during any applicable cure period. In no event shall Borrower have the right to cure Events of Default more than three times during the term of this Agreement.

## 7.3 No Waiver of Event of Default

No course of dealing or delay or failure to assert any Event of Default shall constitute a waiver of that Event of Default or of any prior or subsequent Event of Default.

---

8. Remedies

8.1 Remedies upon Event of Default

Upon the occurrence of an Event of Default, and at any time thereafter, all or any portion of the obligations due or to become due from Borrower to Lender, whether arising under this Loan Agreement, the Promissory Note, the Security Documents or otherwise, at the option of Lender and without notice to Borrower of the exercise of such option, shall accelerate and become at once due and payable in full, and Lender shall have all rights and remedies created by or arising from the Loan Documents, and all other rights and remedies existing at law, in equity, or by statute.

Additionally, Lender shall have the right, immediately and without prior notice or demand, to set off against Borrower's obligations to Lender, whether or not due, all money and other amounts owed by Lender in any capacity to Borrower, including, without limitation, checking accounts, savings accounts, and other depository accounts, and Lender shall be deemed to have exercised such right of setoff and to have made a charge against any such money or amounts immediately upon occurrence of an Event of Default, even though such charge is entered on Lender's books subsequently thereto.

8.2 Rights and Remedies Cumulative

The rights and remedies herein conferred are cumulative and not exclusive of any other rights or remedies and shall be in addition to every other right, power, and remedy that Lender may have, whether specifically granted herein or hereafter existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Lender may deem expedient.

8.3 No Waiver of Rights

No delay or omission in the exercise or pursuance by Lender of any right, power, or remedy shall impair any such right, power, or remedy or shall be construed to be a waiver thereof.

9. General Provisions

9.1 Governing Agreement

In the event of conflict or inconsistency between this Loan Agreement and the other Loan Documents, excluding the Promissory Note, the terms, provisions and intent of this Loan Agreement shall govern.

9.2 Borrower's Obligations Cumulative

Every obligation, covenant, condition, provision, warranty, agreement, liability, and undertaking of Borrower contained in the Loan Documents shall be deemed cumulative and not in derogation or substitution of any of the other obligations, covenants, conditions, provisions, warranties, agreements, liabilities, or undertakings of Borrower contained herein or therein.

---

### 9.3 Payment of Expenses and Attorney's Fees

Borrower shall pay all reasonable expenses of Lender relating to the negotiation, drafting of documents, documentation of the Loan, and administration and supervision of the Loan, including, without limitation, appraisal fees, environmental inspection fees, field examination expenses, title insurance, recording fees, filing fees, and reasonable attorneys fees and legal expenses, whether incurred in making the Loan, in future amendments or modifications to the Loan Documents, or in ongoing administration and supervision of the Loan.

Upon occurrence of an Event of Default, Borrower agrees to pay all costs, and expenses, including reasonable attorney fees and legal expenses, incurred by Lender in enforcing, or exercising any remedies under, the Loan Documents, and any other rights and remedies.

Borrower agrees to pay all expenses, including reasonable attorney fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Borrower, the Loan Documents, or the Collateral, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral or relating to any plan of reorganization.

### 9.4 Right to Perform for Borrower

Lender may, in its sole discretion and without any duty to do so, elect to discharge taxes, tax liens, security interests, or any other encumbrance upon the Collateral or any other property or asset of Borrower, to pay any filing, recording, or other charges payable by Borrower, or to perform any other obligation of Borrower under this Loan Agreement or under the Security Documents.

### 9.5 Assignability

Borrower may not assign or transfer any of the Loan Documents and any such purported assignment or transfer is void.

Lender may assign or transfer any of the Loan Documents. Funding of this Loan may be provided by an affiliate of Lender.

### 9.6 Third Party Beneficiaries

The Loan Documents are made for the sole and exclusive benefit of Borrower and Lender and are not intended to benefit any other third party. No third party may claim any right or benefit or seek to enforce any term or provision of the Loan Documents.

### 9.7 Governing Law

The Loan Documents shall be governed by and construed in accordance with the laws of the State of Utah, except to the extent that any such document expressly provides otherwise.

### 9.8 Severability of Invalid Provisions

Any provision of this Loan Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

---

#### 9.9 Interpretation of Loan Agreement

The article and section headings in this Loan Agreement are inserted for convenience only and shall not be considered part of the Loan Agreement nor be used in its interpretation.

All references in this Loan Agreement to the singular shall be deemed to include the plural when the context so requires, and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context otherwise clearly requires a different interpretation.

#### 9.10 Survival and Binding Effect of Representations, Warranties, and Covenants

All agreements, representations, warranties, and covenants made herein by Borrower shall survive the execution and delivery of this Loan Agreement and shall continue in effect so long as any obligation to Lender contemplated by this Loan Agreement is outstanding and unpaid, notwithstanding any termination of this Loan Agreement. All agreements, representations, warranties, and covenants made herein by Borrower shall survive any bankruptcy proceedings involving Borrower. All agreements, representations, warranties, and covenants in this Loan Agreement shall bind the party making the same, its successors and, in Lender's case, assigns, and all rights and remedies in this Loan Agreement shall inure to the benefit of and be enforceable by each party for whom made, their respective successors and, in Lender's case, assigns.

#### 9.11 Indemnification

Borrower hereby agrees to indemnify Lender for all liabilities and damages (including contract, tort and equitable claims) which may be awarded against Lender, and for all reasonable attorneys fees, legal expenses and other expenses incurred in defending such claims, arising from or relating in any manner to the advances on Qualified Accounts pursuant to this Loan Agreement, negotiation, execution or performance by Lender of the Loan Documents (including all reasonable attorneys fees, legal expenses and other expenses incurred in defending any such claims brought by Borrower if Borrower does not prevail in such actions), excluding only breach of contract by Lender under such circumstances that such breach amounts to gross negligence or willful misconduct. Lender shall have sole and complete control of the defense of any such claims and is hereby given authority to settle or otherwise compromise any such claims as Lender in good faith determines shall be in its best interests.

#### 9.12 Environmental Indemnification

Borrower shall indemnify Lender for any and all claims and liabilities, and for damages which may be awarded or incurred by Lender, and for all reasonable attorney fees, legal expenses, and other out-of-pocket expenses arising from or related in any manner, directly or indirectly, to (i) Hazardous Materials located on, in, or under the Real Property; (ii) any Environmental Condition on, in, or under the Real Property; (iii) violation of or non compliance with any Environmental Health and Safety Law; (iv) any breach or violation of Section 5.10 Environmental Representations and Warranties and/or Section 6.13 Environmental Covenants;

---

and/or (v) any activity or omission, whether occurring on or off the Real Property, whether prior to or during the term of the loans secured hereby, and whether by Borrower or any other person or entity, relating to Hazardous Materials or an Environmental Condition. The indemnification obligations of Borrower under this Section shall survive any reconveyance, release, or foreclosure of the Real Property, any transfer in lieu of foreclosure, and satisfaction of the obligations secured hereby.

Lender shall have the sole and complete control of the defense of any such claims. Lender is hereby authorized to settle or otherwise compromise any such claims as Lender in good faith determines shall be in its best interests.

9.13 Interest on Expenses and Indemnification, Collateral, Order of Application

All expenses, out-of-pocket costs, attorneys fees and legal expenses, amounts advanced in performance of obligations of Borrower, and indemnification amounts owing by Borrower to Lender under or pursuant to this Loan Agreement, the Promissory Note, and/or any Security Documents shall be due and payable upon demand. If not paid upon demand, all such obligations shall bear interest at the default rate provided in the Promissory Note from the date of disbursement until paid to Lender, both before and after judgment. Lender is authorized to disburse funds under the Promissory Note for payment of all such obligations.

Payment of all such obligations shall be secured by the Collateral and by the Security Documents.

All payments and recoveries shall be applied to payment of the foregoing obligations, the Promissory Note, and all other amounts owing to Lender by Borrower in such order and priority as determined by Lender. Unless provided otherwise in the Promissory Note, payments on the Promissory Note shall be applied first to accrued interest and the remainder, if any, to principal.

9.14 Limitation of Consequential Damages

Lender and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Borrower for consequential damages arising from or relating to any breach of contract, tort, or other wrong in connection with the negotiation, documentation, administration or collection of the Loan.

9.15 Waiver of Defenses and Release of Claims

Borrower hereby (i) represents that neither the Borrower nor any affiliate or principal of Borrower has any defenses to or setoffs against any obligations owing by Borrower, or by Borrower's affiliates or principals, to Lender or Lender's affiliates, nor any claims against Lender or Lender's affiliates for any matter whatsoever, related or unrelated to any obligations, and (ii) releases Lender and Lender's affiliates, officers, directors, employees, representatives and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that Borrower has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Loan, including the subject matter of the Loan Documents. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to Borrower by Lender or Lender's affiliates. Borrower acknowledges that Lender has been induced to enter into or continue the obligations by, among other things, the waivers and releases in this paragraph.

---

9.16 Revival Clause

If the incurring of any debt by Borrower or the payment of any money or transfer of property to Lender by or on behalf of Borrower should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "voidable transfers"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Lender is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Lender's counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys fees of Lender related thereto, the liability of Borrower shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

9.17 Jury Trial Waiver, Arbitration, and Class Action Waiver

This Section contains a jury waiver, arbitration clause, and a class action waiver. READ IT CAREFULLY.

a. Jury Trial Waiver. As permitted by applicable law, Borrower and Lender each waive their respective rights to a trial before a jury in connection with any Dispute (as "Dispute" is hereinafter defined), and Disputes shall be resolved by a judge sitting without a jury. If a court determines that this provision is not enforceable for any reason and at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order").

b. Arbitration. If a claim, dispute, or controversy arises between Borrower and Lender with respect to this Agreement, related agreements, or any other agreement or business relationship between Borrower and Lender whether or not related to the subject matter of this Agreement (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any of the parties may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. By agreeing to arbitrate a Dispute, Borrower gives up any right it may have to a jury trial, as well as other rights it would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or National Arbitration Forum ("Administrator") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters relating to a deposit account, application for or denial of credit, enforcement of any of the obligations the parties have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party,

---

including but not limited to the validity, enforceability, meaning, or scope of this arbitration provision, and including a dispute based on or arising from an alleged tort or matters involving either of Borrower's or Lender's employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, Borrower and Lender each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if there is no agreement, in Salt Lake City, Utah.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator will (i) hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment, (ii) will render a decision and any award applying applicable law, (iii) give effect to any limitations period in determining any Dispute or defense, (iv) enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable, (v) with regard to motions and the arbitration hearing, apply rules of evidence governing civil cases, and (vi) apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* The provisions of this arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

---

c. Class Action Waiver. **BORROWER AND LENDER EACH WAIVE THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.**

d. Reliance. Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this section.

9.18 Consent to Utah Jurisdiction and Exclusive Jurisdiction of Utah Courts

Borrower acknowledges that by execution and delivery of the Loan Documents Borrower has transacted business in the State of Utah and Borrower voluntarily submits to, consents to, and waives any defense to the jurisdiction of courts located in the State of Utah as to all matters relating to or arising from the Loan Documents and/or the transactions contemplated thereby. EXCEPT AS EXPRESSLY AGREED IN WRITING BY LENDER AND EXCEPT AS PROVIDED IN THE ARBITRATION PROVISIONS ABOVE, THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF UTAH SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OF ANY AND ALL CLAIMS, DISPUTES, AND CONTROVERSIES, ARISING UNDER OR RELATING TO THE LOAN DOCUMENTS AND/OR THE TRANSACTIONS CONTEMPLATED THEREBY. NO LAWSUIT, PROCEEDING, OR ANY OTHER ACTION RELATING TO OR ARISING UNDER THE LOAN DOCUMENTS AND/OR THE TRANSACTIONS CONTEMPLATED THEREBY MAY BE COMMENCED OR PROSECUTED IN ANY OTHER FORUM EXCEPT AS EXPRESSLY AGREED IN WRITING BY LENDER.

9.19 Notices

All notices or demands by any party to this Loan Agreement shall, except as otherwise provided herein, be in writing and may be sent by certified mail, return receipt requested. Notices so mailed shall be deemed received when deposited in a United States post office box, postage prepaid, properly addressed to Borrower or Lender at the mailing addresses stated herein or to such other addresses as Borrower or Lender may from time to time specify in writing. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

Mailing addresses:

Lender:

Zions First National Bank  
Corporate Banking Group  
One South Main Street, Suite 200  
Salt Lake City, Utah 84111  
Attention: Thomas C. Etzel, Sr. Vice President

---

With a copy to:

Holland & Hart LLP  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
Attention: Scott R. Irwin, Esq.

Borrower:

inContact, Inc.  
7730 South Union Park Avenue, Suite 500  
Salt Lake City, Utah 84047  
Attention: Greg Ayers

9.20 Duplicate Originals; Counterpart Execution

Two or more duplicate originals of the Loan Documents may be signed by the parties, each duplicate of which shall be an original but all of which together shall constitute one and the same instrument. Any Loan Documents may be executed in several counterparts, without the requirement that all parties sign each counterpart. Each of such counterparts shall be an original, but all counterparts together shall constitute one and the same instrument.

9.21 Disclosure of Financial and Other Information

Borrower hereby consents to Lender disclosing to any other lender who may participate in the Loan any and all information, knowledge, reports, and records, including, without limitation, financial statements, relating in any manner whatsoever to the Loan and Borrower.

9.22 Integrated Agreement and Subsequent Amendment

The Loan Documents constitute the entire agreement between Lender and Borrower, and may not be altered or amended except by written agreement signed by Lender and Borrower. PURSUANT TO UTAH CODE SECTION 25-5-4, BORROWER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT BETWEEN LENDER AND BORROWER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

All prior and contemporaneous agreements, arrangements and understandings between the parties hereto as to the subject matter hereof are, except as otherwise expressly provided herein, rescinded.

This Amended and Restated Loan Agreement restates, replaces and supersedes in its entirety, but does not extinguish or novate, the Original Loan Agreement.

[Signature Page Follows]

---

IN WITNESS WHEREOF, this Loan Agreement was executed and becomes effective as of the day and year first set forth above.

Lender:

**Zions First National Bank**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Borrower:

**inContact, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

SCHEDULE 5.5

LITIGATION DISCLOSURE

California College, Inc., et al v. UCN, Inc., et al, Third Judicial District Court in and for Salt Lake County, State of Utah, Case No. 090907053

NobelBiz, Inc.v. inContact, Inc. The suit involves US Patent No. 8,135,122, which issued about a month ago to James Siminoff. The assignee is NobelBiz, Inc. from Carlsbad, CA.

SCHEDULE 6.16  
EXISTING DEBT

<u>Payee</u>	<u>Principle Balance as of 3/31/12</u>	<u>Monthly Payment</u>	<u>Last Monthly Payment Date</u>	<u>Description</u>
Mazuma 2.1	\$ 17,437.86	17,583.18	4/1/2012	Principally IT and telephony assets, originally 12 month amortization
Letters of Credit on behalf of:				
Mazuma	\$ 166,659.54			To secure lease financing
AMEX	81,018.80			To secure credit cards

**AMENDED AND RESTATED PROMISSORY NOTE**  
(Revolving Loan)

April 30, 2012

Borrower: inContact, Inc., a Delaware corporation  
Lender: Zions First National Bank, a national banking association  
Amount: \$8,500,000.00  
Maturity Date: July 1, 2014

For value received, Borrower promises to pay to the order of Lender at Zions First National Bank, Corporate Banking Group, One South Main, Suite 200, Salt Lake City, Utah 84111, or at such other address as the holder of this Amended and Restated Promissory Note at any given time may designate by written notice to Borrower, the sum of \$8,500,000, or such other principal balance as may be outstanding, in lawful money of the United States, with interest thereon calculated and payable as provided herein.

Definitions

Terms used in the singular shall have the same meaning when used in the plural and vice versa. Capitalized terms used by not defined herein shall have the meanings given to such terms in the Loan Agreement (as defined herein). As used in this Amended and Restated Promissory Note, the term:

"Default Rate" means the interest rate in effect hereunder from time to time (including any applicable margin) plus 3.0% per annum.

"Dollars" and the sign "\$" mean lawful money of the United States.

"Loan Agreement" means that certain Amended and Restated Loan Agreement of even date herewith between Lender and Borrower, together with any exhibits, schedules, amendments, addenda, and modifications thereto.

"Maturity Date" shall have the meaning set forth in the heading of this Promissory Note.

"Ninety Day FHLB Rate" means the rate per annum quoted by Lender as Lender's Ninety Day FHLB Rate based upon the FHLB Seattle rate as quoted by Bloomberg, or on the FHLB Seattle internet web site at [www.FHLBsea.com](http://www.FHLBsea.com), or other comparable service selected by Lender. The definition of "Ninety Day FHLB Rate" is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the rate used herein. It is not necessarily the lowest rate charged by Lender on its loans. If the Ninety Day FHLB Rate becomes unavailable during the term of this Amended and Restated Promissory Note, Lender may designate a substitute index after notifying Borrower.

---

"Ninety Day LIBOR Rate" means the rate per annum quoted by Lender as its Ninety Day LIBOR Rate based upon quotes from the London Interbank Offered Rate from the British Bankers Association Interest Settlement Rates as quoted for United States Dollars by Bloomberg or other comparable services selected by Lender. This definition of Ninety Day LIBOR Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the interest rate used herein. It is not the lowest rate at which Lender may make loans to any of its customers, either now or in the future.

#### Interest

Interest shall accrue on the outstanding principal balance hereunder from the date of disbursement until paid, both before and after judgment, at a variable rate computed on the basis of a 360 day year as follows: 4.5% per annum above the Ninety Day LIBOR Rate, from time to time in effect, adjusted as of the date of any change in the Ninety Day LIBOR Rate.

Notwithstanding the foregoing, if Lender reasonably determines (which determination shall be conclusive) that (i) quotations of interest rates referred to in the definition of Lender's Ninety Day LIBOR Rate are not being provided in the relevant amounts or for the relevant maturities for purposes of Lender determining Lender's Ninety Day LIBOR Rate, (ii) the adoption of any applicable law, rule, or regulation or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency shall make it unlawful or impossible for Lender to offer loans based on the Ninety Day LIBOR Rate, or (iii) the Ninety Day LIBOR Rate does not accurately cover the cost of Lender making or maintaining advances based on Lender's Ninety Day LIBOR Rate, then Lender shall give notice thereof to Borrower, whereupon until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, the interest rate hereunder shall be converted to a variable rate computed on the basis of a 360 day year as follows: 4.5% per annum above the Ninety Day FHLB Rate, from time to time in effect, adjusted as of the date of any change in the Ninety Day FHLB Rate.

#### Revolving Line of Credit

This Amended and Restated Promissory Note shall be a revolving line of credit under which Borrower may repeatedly draw and repay funds, so long as no default exists hereunder or under the Loan Agreement. All disbursements under this Promissory Note shall be made in accordance with and subject to the conditions set forth in the Loan Agreement.

#### Payment Terms

Principal and interest shall be payable as follows: Interest accrued is to be paid in arrears commencing May 1, 2012, and on the same day of each month thereafter. All principal and unpaid interest shall be paid in full on the Maturity Date.

---

All payments shall be applied (a) first, to reimbursable fees, late charges, costs and expenses payable by Borrower under this Promissory Note or any of the other Loan Documents, (b) second, to accrued interest and (c) the remainder, if any, to principal.

Prepayment

Borrower may prepay all or any portion of this Amended and Restated Promissory Note at any time without penalty. Any prepayment received by Lender after 2:00 p.m. Mountain Time shall be deemed received on the following Banking Business Day.

General

Upon default in payment of any principal or interest when due, whether due at stated maturity, by acceleration, or otherwise, all outstanding principal shall bear interest at the Default Rate from the date when due until paid, both before and after judgment.

If, at any time prior to the maturity of this Amended and Restated Promissory Note, this Amended and Restated Promissory Note shall have a zero balance owing, this Amended and Restated Promissory Note shall not be deemed satisfied or terminated but shall remain in full force and effect for future draws unless terminated upon other grounds.

This Amended and Restated Promissory Note is made in accordance with the Loan Agreement and is secured by the collateral identified in and contemplated by the Loan Agreement, including, without limitation, that certain Security Agreement (All Assets) dated July 16, 2009 between Borrower and Lender, and any and all amendments, modifications, and replacements thereof.

If an Event of Default occurs, time being of the essence hereof, then the entire unpaid balance, with interest as aforesaid, shall, at the election of the holder hereof and without notice of such election, become immediately due and payable in full.

If an Event of Default occurs, Borrower agrees to pay to the holder hereof all collection costs, including reasonable attorney fees and legal expenses, in addition to all other sums due hereunder.

This Amended and Restated Promissory Note shall be governed by and construed in accordance with the laws of the State of Utah.

Borrower and all endorsers, sureties and guarantors hereof hereby jointly and severally waive presentment for payment, demand, protest, notice of protest, notice of protest and of non-payment and of dishonor, and consent to extensions of time, renewal, waivers or modifications without notice and further consent to the release of any collateral or any part thereof with or without substitution.

This Amended and Restated Promissory Note restates, replaces and supersedes in its entirety, but does not extinguish or novate, that certain Promissory Note dated July 16, 2009, executed by Borrower, and any previous renewals, modifications or amendments thereof (the "Prior Note"). All interest evidenced by the Prior Note shall continue to be due and payable until paid.

---

IN WITNESS WHEREOF, this Amended and Restated Promissory Note has been executed and becomes effective as of the day and year first set forth above.

Borrower:  
**inContact, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

5530296  
AMENDED AND RESTATED  
PROMISSORY NOTE  
(REVOLVING LOAN)  
Signature Page

**PROMISSORY NOTE**

(Term Loan)

April 30, 2012

Borrower: inContact, Inc., a Delaware corporation  
Lender: Zions First National Bank, a national banking association  
Loan Amount: \$4,000,000  
Maturity Date: May 1, 2016

For value received, Borrower promises to pay to the order of Lender at Zions First National Bank, Corporate Banking Group, One South Main Street, Suite 200, Salt Lake City, Utah 84111, or at such other address as the holder of this Promissory Note at any given time may designate by written notice to Borrower, the sum of \$4,000,000, or such other principal balance as may be outstanding, in lawful money of the United States with interest thereon calculated and payable as provided herein.

Definitions

Terms used in the singular shall have the same meaning when used in the plural and vice versa. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Loan Agreement (as defined herein). As used in this Promissory Note, the term:

"Applicable Margin" means 4.50% per annum.

"Default Rate" means the interest rate in effect hereunder from time to time (including any applicable margin) plus 3.0% per annum.

"Dollars" and the sign "\$" mean lawful money of the United States.

"Draw Period" means the Effective Date through April 30, 2013.

"FHLB Rate" means the rate per annum quoted by Lender as Lender's FHLB rate based upon the FHLB Seattle rate as quoted in Bloomberg, or on the FHLB Seattle internet web site at [www.FHLBsea.com](http://www.FHLBsea.com), or other comparable service selected by Lender for the applicable Interest Period. This definition of FHLB Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the rate used herein. It is not necessarily the lowest rate charged by Lender on its loans. If the FHLB Rate becomes unavailable during the term of this Promissory Note, Lender may designate a substitute index after notifying Borrower.

"Interest Period" means, with respect to any advance or balance for which interest is based on the LIBOR Rate, the period commencing on the date such advance is made or, as to an existing balance, the date selected by Borrower and ending, as Borrower may select, on the

---

numerically corresponding day in the first year thereafter, except that each such Interest Period that commences on the last Banking Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Business Day of the appropriate subsequent calendar month; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

- a. No Interest Period may extend beyond the termination of the Loan Agreement;
- b. No Interest Period may extend beyond the aforesaid Maturity Date or such later date to which it is extended; and
- c. If an Interest Period would end on a day that is not a Banking Business Day, such Interest Period shall be extended to the next Banking Business Day unless such Banking Business Day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Banking Business Day.

"LIBOR Rate" applicable to any Interest Period means the rate per annum quoted by Lender two Banking Business Days prior to the commencement of the Interest Period as its LIBOR Rate based upon quotes from the London Interbank Offered Rate from the British Bankers Association Interest Settlement Rates as quoted for United States Dollars by Bloomberg or other comparable services selected by Lender for the applicable Interest Period. This definition of LIBOR Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the interest rate used herein. The LIBOR Rate of Lender may not necessarily be the same as the quoted offered side in the Eurodollar time deposit market quoted by any particular institution or service applicable to any Interest Period. It is not the lowest rate at which Lender may make loans to any of its customers, either now or in the future.

"Loan Agreement" means that certain Amended and Restated Loan Agreement of even date herewith between Lender and Borrower, together with any exhibits, schedules, amendments, addenda, and modifications thereto.

"Maturity Date" shall have the meaning set forth in the heading of this Promissory Note.

"Ninety Day FHLB Rate" means the rate per annum quoted by Lender as Lender's Ninety Day FHLB rate based upon the FHLB Seattle rate as quoted in Bloomberg, or on the FHLB Seattle internet web site at [www.FHLBsea.com](http://www.FHLBsea.com), or other comparable service selected by Lender. This definition of Ninety Day FHLB Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the rate used herein. It is not necessarily the lowest rate charged by Lender on its loans. If the Ninety Day FHLB Rate becomes unavailable during the term of this Promissory Note, Lender may designate a substitute index after notifying Borrower.

"Ninety Day LIBOR Rate" means the rate per annum quoted by Lender as its Ninety Day LIBOR Rate based upon quotes from the London Interbank Offered Rate from the British Bankers Association Interest Settlement Rates as quoted for United States Dollars by Bloomberg or other comparable services selected by Lender. This definition of Ninety Day LIBOR Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index

---

to determine the interest rate used herein. The Ninety Day LIBOR Rate of Lender may not necessarily be the same as the quoted offered side in the Eurodollar time deposit market quoted by any particular institution or service. It is not necessarily the lowest rate at which Lender may make loans to any of its customers, either now or in the future.

#### Disbursement

This Promissory Note shall be an amortizing term loan. Amounts borrowed and repaid may not be re-advanced or re-borrowed by Borrower. The right of Borrower to draw funds and the obligation of Lender to make any advance of the proceeds of this Promissory Note to Borrower shall not accrue, in the case of each requested advance, until all of the conditions set forth in Section 4 of the Loan Agreement have been fully satisfied, and shall terminate on the earlier to occur of: (i) the end of the Draw Period, or (ii) upon occurrence of an Event of Default or event which, with the passage of time or giving of notice or both, would constitute an Event of Default. Any principal amounts for which disbursement has not been requested during the Draw Period shall not be disbursed hereunder and Borrower shall not be liable to repay such non-disbursed amounts. All amounts owing under this Promissory Note shall be due and payable in full by Borrower upon maturity, whether at the stated maturity date, upon acceleration thereof, or upon renewal or extension thereof.

Provided no Event of Default has occurred, proceeds of this Promissory Note shall be disbursed from time to time during the Draw Period upon request of Borrower according to the terms set forth in the Loan Agreement. Requests for disbursements shall be given in writing or orally no later than 12:00 p.m. Mountain Time of the Banking Business Day on which the advance is to be made. Disbursements hereunder shall be made to Borrower's account with Lender

#### Payment Terms

Interest is to be paid in arrears commencing May 1, 2012, and on the same day of each month thereafter.

Principal outstanding as of the end of the Draw Period is to be paid in 36 equal monthly installments commencing June 1, 2013, and on the same day of each month thereafter through the Maturity Date.

All outstanding principal, unpaid interest and all other amounts due under this Promissory Note or any of the other Loan Documents shall be paid in full on the Maturity Date.

All payments shall be applied (a) first, to reimbursable fees, late charges, costs and expenses payable by Borrower under this Promissory Note or any of the other Loan Documents, (b) second, to accrued interest and (c) the remainder, if any, to principal.

Interest shall accrue from the date of disbursement of the principal amount until paid, both before and after judgment, in accordance with the terms set forth herein.

---

Interest Rate Election

From the Effective Date through the completion of the Draw Period (or thereafter if Borrower fails to elect to convert the interest rate), interest on the entire outstanding principal balance hereunder shall accrue based on the Ninety Day LIBOR Rate.

Not less than three Banking Business Days prior to the end of the Draw Period, Borrower shall notify Lender in writing of its election for the entire outstanding principal balance hereunder to accrue interest based on either the Ninety Day LIBOR Rate or the LIBOR Rate for a specified Interest Period. Upon the expiration of any elected Interest Period, the interest rate hereunder shall automatically convert to one based on the Ninety Day LIBOR Rate unless Borrower gives three Banking Business Days prior written notice to Lender to renew the LIBOR Rate for a specified Interest Period; provided that no Event of Default has occurred and is continuing at the time of any such election.

Any election to convert to an interest rate based on the LIBOR Rate for a specified Interest Period may not be changed after notice is given by Borrower hereunder without consent of Lender until the expiration of the selected Interest Period.

Interest Based on Ninety Day LIBOR Rate

Interest based on the Ninety Day LIBOR Rate shall be calculated as follows:

1. Interest shall be at a variable rate computed on the basis of a 360 day year, actual days elapsed, at the Ninety Day LIBOR Rate from time to time in effect, adjusted as of any change in the Ninety Day LIBOR Rate, plus the Applicable Margin.
2. Notwithstanding the foregoing, if Lender determines (which determination shall be conclusive) that (a) quotations of interest rates in the relevant amounts or for the relevant maturities are not being provided for purposes of Lender determining the Ninety Day LIBOR Rate, (b) the Ninety Day LIBOR Rate does not adequately cover the cost to Lender of making or maintaining advances based on the Ninety Day LIBOR Rate, or (c) the adoption of any applicable law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency, shall make it unlawful or impossible for Lender to offer loans based on the Ninety Day LIBOR Rate, then (i) the right of Borrower to request interest pricing based on the Ninety Day LIBOR Rate shall be suspended until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, and (ii) upon notice to Borrower by Lender, the outstanding principal amount of the balances based on the Ninety Day LIBOR Rate shall be immediately converted to a balance based on the Ninety Day FHLB Rate plus Applicable Margin. Any prepayment based upon such action shall not be subject to any prepayment fees or charges.

---

Interest Based on LIBOR Rate

Interest based on the LIBOR Rate shall be calculated as follows:

1. Interest shall be at a rate computed on the basis of a 360 day year at a rate equal to the LIBOR Rate for the applicable Interest Period, plus the Applicable Margin.
2. Notwithstanding the foregoing, if Lender determines (which determination shall be conclusive) that (a) quotations of interest rates in the relevant amounts or for the relevant maturities are not being provided for purposes of Lender determining the LIBOR Rate, (b) the LIBOR Rate does not adequately cover the cost to Lender of making or maintaining advances based on the LIBOR Rate, or (c) the adoption of any applicable law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency, shall make it unlawful or impossible for Lender to offer loans based on the LIBOR Rate, then (i) the right of Borrower to request interest pricing based on the LIBOR Rate shall be suspended until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, and (ii) upon notice to Borrower by Lender, the outstanding principal amount of the balances based on the LIBOR Rate shall be immediately converted to a balance based on the FHLB Rate plus Applicable Margin. Any prepayment based upon such action shall not be subject to any prepayment fees or charges.

Prepayment

Borrower may prepay all or any portion of this Promissory Note at any time without penalty or premium; provided, however, that in the event of any voluntary or involuntary prepayment of any LIBOR Rate based balance prior to the end of an Interest Period, Borrower shall make Lender whole and Borrower shall pay to Lender all breakage costs incurred by Lender in connection with such prepayment and compensate Lender for any actual out-of-pocket loss suffered by reason of such principal payment not being made at the end of the Interest Period or as scheduled. Such costs and losses to Lender shall be limited to any loss or breakage costs arising from the re-employment of funds at rates lower than the rate provided by this Promissory Note, cost to Lender of such funds, any interest or fees payable by Lender to lenders of funds obtained by them in order to make or maintain the loan evidenced by this Promissory Note and any related costs. Unless specified otherwise by Borrower, (a) prepayments of principal shall be applied first to outstanding LIBOR Rate based balances, and (b) prepayments of principal applied to LIBOR Rate based balances should be made in the principal amount equal to the aggregate principal amount of the LIBOR Rate based balance, if any, that has an Interest Period ending on such date of prepayment, and so long as no Event of Default has occurred and is continuing, Borrower may, at its option, defer the balance of the prepayment to be applied against any other LIBOR Rate based balance until the next following Interest Period applicable to such LIBOR Rate based balance; provided that cash in an amount equal to the amount of any prepayment so deferred shall be deposited in a cash collateral account maintained with the Lender.

---

Any prepayment received by Lender after 2:00 p.m. Mountain Time (whichever is in effect on the date the prepayment is received) shall be deemed received on the following Banking Business Day.

General

Upon default in payment of any principal or interest when due, whether due at stated maturity, by acceleration, or otherwise, all outstanding principal shall bear interest at the Default Rate from the date when due until paid, both before and after judgment.

This Promissory Note is made in accordance with the Loan Agreement and is secured by the collateral identified in and contemplated by the Loan Documents, including, without limitation, that certain Security Agreement (All Assets) dated July 16, 2009 between Borrower and Lender, and any and all amendments, modifications, and replacements thereof.

If an Event of Default occurs, time being the essence hereof, then the entire unpaid balance, with interest as aforesaid, shall, at the election of the holder hereof and without notice of such election, become immediately due and payable in full.

If an Event of Default occurs, Borrower agrees to pay to the holder hereof all collection costs, including reasonable attorney fees and legal expenses, in addition to all other sums due hereunder.

This Promissory Note shall be governed by and construed in accordance with the laws of the State of Utah.

Borrower and all endorsers, sureties and guarantors hereof hereby jointly and severally waive presentment for payment, demand, protest, notice of protest, notice of protest and of non-payment and of dishonor, and consent to extensions of time, renewal, waivers or modifications without notice and further consent to the release of any collateral or any part thereof with or without substitution.

[Signature Page(s) Follow]

---

IN WITNESS WHEREOF, this Promissory Note has been executed by Borrower as of the date first written above.

Borrower:

**inContact, Inc.**

By: \_\_\_\_\_

Name:

Title:

5530337

PROMISSORY NOTE (TERM LOAN)

Signature Page

**Certification**

I, Paul Jarman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for period ended March 31, 2012 of inContact, 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 periods 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

5. The registrant's other certifying officer(s) 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: May 4, 2012

By: /s/ Paul Jarman  
Paul Jarman  
Chief Executive Officer

**Certification**

I, Gregory S. Ayers, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2012 of inContact, 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 periods 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

5. The registrant's other certifying officer(s) 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: May 4, 2012

By: /s/ Gregory S. Ayers  
Gregory S. Ayers  
Chief Financial Officer

