

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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### FILER

#### PREVIO INC

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549  
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FORM 10-Q

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

For the Quarterly Period Ended December 31, 2001

OR

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

For the Transition Period From \_\_\_\_ to \_\_\_\_  
-----

Commission File Number 0-20095

PREVIO, INC.

(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction of  
incorporation or organization)

95-3825313  
(I.R.S. Employer  
Identification No.)

12636 High Bluff Drive, San Diego, California 92130-2093  
(Address of principal executive office, including zip code)

(858) 794-3789  
(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 the number of shares outstanding of each of the registrant's classes of common stock as of February 4, 2002.

Common Stock, par value \$0.001 per share 6,881,062 shares

PREVIO, INC.

INDEX

PART I. FINANCIAL INFORMATION

	Page
Item 1. Financial Statements	----
Condensed Consolidated Balance Sheets as of December 31, 2001 (unaudited) and September 30, 2001	3
Condensed Consolidated Statements of Operations for the three months ended December 31, 2001 and 2000, (unaudited)	4
Condensed Consolidated Statements of Cash Flows for the three months ended December 31, 2001 and 2000, (unaudited)	5
Notes to Unaudited Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	8
Item 3. Quantitative and Qualitative Disclosures about Market Risk	15

PART II. OTHER INFORMATION

Item 1. Legal Proceedings	16
Item 2. Changes in Securities and Use of Proceeds	16
Item 3. Defaults Upon Senior Securities	16
Item 4. Submission of Matters to a Vote of Security Holders	16
Item 5. Other Information	16
Item 6. Exhibits and Reports on Form 8-K	16

SIGNATURES	17
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PREVIO, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS)

ASSETS

December 31, 2001	September 30, 2001
----------------------	-----------------------

	(UNAUDITED)	
Current assets:		
Cash and cash equivalents	\$ 6,211	\$ 9,658
Marketable securities	10,478	9,942
Accounts receivable	700	279
Prepaid expenses	1,102	1,061
	-----	-----
Total current assets	18,491	20,940
Property and equipment, net	1,162	1,272
Other assets	271	263
	-----	-----
	\$ 19,924	\$ 22,475
	=====	=====

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Accounts payable	\$ 366	\$ 652
Deferred revenue	396	423
Accrued expenses and other current liabilities	1,523	1,572
	-----	-----
Total current liabilities	2,285	2,647
Other liabilities	17	17
	-----	-----
	2,302	2,664
	-----	-----
Stockholders' equity		
Common stock at par value	9	9
Additional paid in capital	80,268	80,245
Treasury stock	(41,347)	(41,347)
Cumulative translation adjustment	(42)	(42)
Accumulated deficit	(21,266)	(19,054)
	-----	-----
Total stockholders' equity	17,622	19,811
	-----	-----
	\$ 19,924	\$ 22,475
	=====	=====

See accompanying notes to unaudited condensed consolidated financial statements

PREVIO, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)  
(UNAUDITED)

Three Months Ended  
December 31,  
2001                      2000

Net revenues	\$ 972	\$ 1,926
Cost of revenues	162	175
Gross margin	810	1,751
Operating expenses:		
Research and development	605	1,088
Sales and marketing	1,399	1,652
General and administrative	715	604
Restructuring	425	-
Total operating expenses	3,144	3,344
Operating loss	(2,334)	(1,593)
Interest income	122	484
Loss before income taxes	(2,212)	(1,109)
Benefit from income taxes	-	-
Net loss	\$ (2,212)	\$ (1,109)
Loss per common share, basic and diluted:	\$ (0.32)	\$ (0.16)
Weighted average common shares, basic and diluted	6,877	6,840
Net loss	\$ (2,212)	\$ (1,109)
Cumulative translation adjustment	-	5
Comprehensive loss	\$ (2,212)	\$ (1,104)

See accompanying notes to unaudited condensed consolidated financial statements

PREVIO, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS; UNAUDITED)

	Three Months Ended December 31,	
	2001	2000
	-----	-----
Cash flows from operating activities:		
Net loss	\$ (2,212)	\$ (1,109)
Adjustments required to reconcile net loss		

to net cash used by operating activities:		
Depreciation and amortization	173	269
Stock-based compensation	-	(25)
Changes in assets and liabilities:		
Accounts receivable	(421)	863
Other assets	(59)	(267)
Accounts payable	(286)	(127)
Deferred revenue	(27)	(348)
Accrued expenses and other current liabilities	(49)	132
	-----	-----
Net cash used by operating activities	(2,881)	(612)
	-----	-----
Cash flows from investing activities:		
Purchases of marketable securities	(10,536)	(15,548)
Sales of marketable securities	10,000	9,500
Purchases of property and equipment	(53)	(196)
	-----	-----
Net cash used by investing activities	(589)	(6,244)
	-----	-----
Cash flows from financing activities:		
Issuance of common stock	23	118
	-----	-----
Net cash provided by financing activities	23	118
	-----	-----
Effect of exchange rates on cash and cash equivalents	-	5
Net increase in cash and cash equivalents	(3,447)	(6,733)
Cash and cash equivalents at beginning of period	9,658	17,862
	-----	-----
Cash and cash equivalents at end of period	\$ 6,211	\$ 11,129
	=====	=====

See accompanying notes to unaudited condensed consolidated financial statements

5

PREVIO, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. Basis of Presentation:

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

The accompanying unaudited condensed consolidated financial statements of Previo, Inc. ("Previo" or the "Company") have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with the

consolidated financial statements and notes thereto included in the Company's annual report for the year ended September 30, 2001. (On April 25, 2000, the Company changed its name from Stac Software, Inc., to Previo, Inc. Therefore, some filings and financial statements that are referenced were originally filed or reported under the Stac Software, Inc. name.) In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments, consisting of only normal recurring items, necessary for a fair presentation of the Company's financial position as of December 31, 2001 and its results of operations for the quarters ended December 31, 2001 and 2000, respectively. These unaudited condensed consolidated financial statements are not necessarily indicative of the results to be expected for the entire year.

NOTE 2. Loss Per Share: (TABLE AMOUNTS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)  
 -----

Basic earnings per share, ("EPS"), is calculated by dividing net loss by the weighted average number of common shares outstanding for the period, without consideration for the dilutive impact of potential common shares ("dilutive securities") that were outstanding during the period. Diluted EPS is computed by dividing net loss by the weighted average number of common shares outstanding for the period, increased by dilutive securities that were outstanding during the period unless the effect of these securities is anti-dilutive. Net loss remains the same for the calculations of basic EPS and diluted EPS. The following common stock equivalents were excluded from the calculation because they are anti-dilutive: 10,624 and 724,950 for the quarters ended December 31, 2001 and December 31, 2000, respectively. These calculations are the same for basic and diluted EPS for the quarters ended December 31, 2001 and 2000.

NOTE 3. Stock Option Plan Summary  
 -----

The following is a summary of stock options outstanding at December 31, 2001:

<TABLE>  
 <CAPTION>

			OPTIONS OUTSTANDING		
			NUMBER	WEIGHTED- AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)	WEIGHTED- AVERAGE EXERCISE PRICE
<S>	<C>	<C>	<C>	<C>	<C>
	Price Range				
	\$1.64 - \$3.19.....		413,189	5.51	\$2.80
	\$3.20 - \$3.52.....		341,478	4.70	\$3.38
	\$3.56 - \$3.76.....		335,246	8.62	\$3.72
	\$3.80 - \$6.12.....		330,360	7.36	\$5.06
	\$6.31 - \$11.37.....		388,461	6.72	\$7.65
	\$1.64 - \$11.37.....		1,808,734	6.53	\$4.53

</TABLE>

The following is a summary of stock options exercisable at December 31, 2001:

<TABLE>

<CAPTION>

		OPTIONS EXERCISABLE	
		NUMBER	WEIGHTED-AVERAGE EXERCISE PRICE
<S>	Price Range	<C>	<C>
	\$1.64 - \$3.19	286,539	\$2.72
	\$3.20 - \$3.52	312,701	\$3.38
	\$3.56 - \$3.76	138,369	\$3.71
	\$3.80 - \$6.12	187,407	\$5.04
	\$6.31 - \$11.37	279,332	\$7.61
	\$1.64 - \$11.37	1,204,348	\$4.50

</TABLE>

NOTE 4. Restructuring

On December 31, 2001, the Company began implementation of a restructuring designed to bring costs in closer alignment with anticipated revenues. During the quarter the Company recorded a charge of \$500,000 related to this restructuring. The charge included payments of severance and benefits to terminated employees (\$215,000) and anticipated costs for modifications to the Company's leases, reflecting the reduced work force (\$285,000). Payments for severance and benefits were made during the Company's first fiscal quarter. The lease modifications are expected to be completed during the second quarter of fiscal 2002.

During the fourth quarter of fiscal 2001, the Company recorded a restructuring charge to operations of \$973,000, representing primarily costs incurred as the Company consolidated its sales and marketing efforts to North America. The components of this charge were severance and benefits paid to terminated employees (\$516,000), costs associated with terminating the Company's lease in the United Kingdom and dissolving the Company's United Kingdom subsidiary (\$380,000) and costs associated with modifications to the lease of

the Company's facility in Estonia (\$77,000). As of December 31, 2001, the Company had incurred and paid \$524,000 in severance and benefits to terminated employees, \$254,000 in costs associated with terminating the lease of the United Kingdom facility and dissolving the Company's United Kingdom subsidiary and \$66,000 in costs related to modifying the lease for its Estonian facility. During the first quarter of fiscal 2002, the Company reversed \$75,000 of this charge, as the termination costs for the Company's lease of its United Kingdom office were accomplished on more favorable terms than had been originally provided for. The Company expects to incur and pay the remaining accrued amounts during the second quarter of fiscal 2002.

The net effect in the December 31, 2001 quarter of the above activity was a \$425,000 charge to restructuring.



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

Except for the historical information contained herein, the following discussion contains forward-looking statements that involve risk and uncertainties such as statements about Previo's expected financial results, operating expenses and litigation related to the Company's intellectual property. Previo's future results could differ materially from those discussed here. The Company expects its quarterly results to fluctuate due to the re-focus of the Company into the eSupport market and the related discontinuation and divestiture of its legacy products. Additional factors that could cause or contribute to differences in future results include but are not limited to: fluctuations in the Company's operating results, market acceptance of the Company's eSupport Essentials product and other new product introductions, the Company's decision to begin offering its software products for sale on a subscription basis during the June 2001 quarter, which could result in lower revenues in the short term, the results of the Company's recent restructurings, new product introductions by competitors, technological changes in the personal computer and communications industries, uncertainties regarding intellectual property rights, the impact of any strategic transactions the Company may enter into and the other factors referred to herein (including, but not limited to, the factors discussed below under "Revenues," "Quarterly Trends" "Seasonality," "Operating Systems," "Competition and Risks Associated with New Product Introductions," and "Stock Price Volatility") and in the Company's Form 10-K for the year ended September 30, 2001. Due to these fluctuations and the Company's discontinuation and divestiture of its legacy products, historical results and percentage relationships are not necessarily indicative of the operating results for any future period.

### OVERVIEW

Previo's business is focused on the development and marketing of software products that support business continuity. The Company's products are designed to provide swift, reliable PC and server recovery from software virus or hacker attacks, software failures or glitches, thefts, losses and broken equipment. These capabilities are increasingly important as companies become more dependent on PCs and the risk of loss or damage rises due to greater mobility and connectivity, as well as deliberate acts of destruction.

The Company's products resolve many types of problems more quickly than a computer professional or user otherwise could using ordinary diagnose-and-repair techniques. These problem types include corrupted software or data, user errors, configuration problems, application conflicts, virus attacks, accidentally deleted files, hard disk failures, and lost or stolen personal computers. The results are increased end-user uptime and service levels, faster problem resolution, and significant reductions in support costs and efforts.

8

The ability to recover quickly from any of the problems discussed above is an important component in today's business environment, where businesses may have to deal with the harsh realities of cyber-terrorism or other system disasters. The Company's products help ensure business continuity in the event of such unfortunate occurrences.

eSupport Essentials is designed to return, quickly and comprehensively, an inoperable desktop or notebook computer, and select PC based servers to pre-problem working condition with minimal effort. The software accomplishes

this by taking snapshots of the system hard disk, and by using patented technology to store the compressed information in a network repository. The computer can then be automatically and transparently "rolled-back" to a pre-problem state at any time while preserving all of the data, as well as the user's own unique preference settings. If the organization permits, non-technical users can safely and quickly solve their own problems without involving the Help Desk, reducing costly "first calls" or support escalations. Alternatively, Help Desk personnel can remotely access the PC to perform installations, configuration tasks, or training without requiring expensive desk-side visits.

The Company entered into an agreement with Miramar Systems, Inc. ("Miramar") pursuant to which it has integrated Miramar's Desktop DNA(TM) system migration technology into Previo's eSupport Essentials product. This integrated product permits enterprise users to automate the transfer and preservation of user data and settings when upgrading to a new computer, operating system or both. The Company began shipping its new product feature, FastforwardDNA, powered by Miramar's Desktop DNA technology, during the third quarter of fiscal 2001.

On April 25, 2000, the Company changed its name from Stac Software, Inc., ("Stac") to Previo, Inc. concurrent with a change in the Company's focus away from storage and remote access systems, to enter into the emerging eSupport market space. Stac's business was focused on storage systems recovery software with its Replica Tape and Replica Network Data Manager ("NDM") product lines. Replica Tape and Replica NDM were distributed business systems recovery software products, which enabled PC server, desktop and notebook replication and disaster recovery. Stac also developed and marketed ReachOut Enterprise ("ReachOut") remote communications software, a remote access software suite which allowed administrators and end users to access a PC using another PC through a network, the Internet, ISDN lines or modems.

Because of the change of business focus discussed above, the Company discontinued the sale of its ReachOut and Replica Tape products, and has consummated agreements with third parties for the sale or license of technology and other attributes associated with these products. The Company has and intends to continue to retain the rights to any technology that is needed for incorporation into its current products.

From May 1, 2000 until October 2001 when HP discontinued sales of HP SureStore AutoBackup, the Company had an exclusive OEM agreement with Hewlett-Packard Company ("HP"). Under this agreement, Previo's eSupport Essentials served as the software application core for a network appliance (HP SureStore AutoBackup) and the Company was entitled to receive royalties based on the sales of these products, if any. The Company will not receive any future royalties related to this agreement.

On December 31, 2001, the Company began implementation of a restructuring designed to bring costs in closer alignment with anticipated revenues. During the quarter the Company recorded a charge of \$0.5 million related to this restructuring. The charge included payments of severance and benefits to terminated employees (\$0.2 million) and anticipated costs for

modifications to the Company's office leases, reflecting the reduced work force (\$0.3 million). Payments for severance and benefits were made during the Company's first fiscal quarter. The lease modifications are expected to be completed during the second quarter of fiscal 2002. This charge was partially offset by the Company's reversal of \$0.1 million in excess accruals related to the August 2001 restructuring as the termination costs for the Company's lease

of its United Kingdom office were accomplished on more favorable terms than had been originally expected. This resulted in a net charge of \$0.4 million associated with restructuring activity in the December 2001 quarter.

The following discussion should be read in conjunction with the unaudited condensed consolidated financial statements included elsewhere within this quarterly report.

#### RESULTS OF OPERATIONS

The following table sets forth the Company's results of operations and the percentage relationship of certain items to revenues during the periods shown:

	Three Months Ended December 31,	
	2001	2000
	-----	-----
Revenues	100%	100%
Cost of revenues	17	9
	-----	-----
Gross margin	83	91
	-----	-----
Research and development	62	57
Sales and marketing	144	86
General and administrative	74	31
Restructuring	44	-
	-----	-----
Total operating expenses	324	174
	-----	-----
Operating loss	(241)	(83)
Interest income	13	25
	-----	-----
Loss before income taxes	(228)	(58)
Benefit from income taxes	-	-
	-----	-----
Net loss	(228)%	(58)%
	=====	=====

REVENUES. Revenues decreased 49% to \$1.0 million for the quarter ended December 31, 2001 from \$1.9 million in the quarter ended December 31, 2000. Revenues from the Company's core product, eSupport Essentials, increased from \$0.5 million in the quarter ended December 31, 2000 to \$0.9 million in the quarter ended December 31, 2001. The December 31, 2001 quarter includes \$0.2 million of revenue related to the reversal of a reserve that had been established when HP announced its intention to discontinue its sale of HP SureStore AutoBackup, as the Company anticipated returns associated with the product. As those returns have not materialized, the Company has reversed this reserve.

As discussed above, the Company has initiated significant changes to

its business strategy, including the planned discontinuation of sales of the ReachOut and Replica Tape products, in order to focus on positioning the Company in the eSupport market. The Company expects current and future revenues to be significantly lower than the historical periods prior to the discontinuance of the ReachOut and Replica Tape products.

International sales were \$0.2 million, or 17% of revenues for the quarter ended December 31, 2001 and \$0.5 million or 26% of revenues for the quarter ended December 31, 2000. The decrease in international revenues in the December 31, 2001 quarter from those in the comparable period of the prior fiscal year was primarily due to the closure of the Company's office in the United Kingdom in August 2001. International sales in the quarter ended December 31, 2001 were made primarily to customers in England. Because the Company has decided to focus its marketing and selling efforts in North America, it anticipates a decline in future international sales.

The Company began offering its software products for sale on a subscription basis during the June 2001 quarter. Selling on a "subscription basis" means either a fee per user for a period of time or per use of the product. From June 1, 2001 until December 31, 2001, only a limited number of sales have been made on a subscription basis. However, it is possible that a larger portion of the Company's future sales will be on a subscription basis beginning in the March 2002 quarter. As the Company phases in the subscription pricing model, it is likely to experience a decline in revenues in the short term. This could occur because one-time perpetual license sales generally result in immediately recognizable revenue, whereas a comparable sale to an enterprise of the same size on a subscription basis would result in smaller per month revenues recognized pro-rata over the duration of the agreement. This pro-rata recognition of revenues and the resultant short term decline in revenues is likely to be further accentuated by the fact that historically the majority of the Company's sales take place late in the fiscal quarter. Although the Company expects the value of a subscription sale over its lifetime will exceed that of a one-time perpetual license sale for any given customer, the short-term impact on the Company's revenues will likely be negative. In addition, there is no assurance that the value of any subscription sale over its lifetime will exceed that of a one-time perpetual license sale for any given customer.

**COST OF REVENUES AND GROSS MARGIN.** Cost of revenues consists primarily of license fees and the costs of rendering product support services. Gross margins were 83% for the quarter ended December 31, 2001, compared to 91% in the comparable quarter of the prior fiscal year. The lower gross margins in fiscal 2002 than in fiscal 2001 are primarily due to the fixed nature of support costs in relation the lower revenue base on which the gross margin is calculated. Additionally, cost of revenues for the December 2001 quarter includes costs of royalties paid to Miramar pursuant to the technology licensing agreement discussed above.

**RESEARCH AND DEVELOPMENT.** Research and development costs consist primarily of salaries, employee benefits, overhead, fees paid to outside contractors and non-recurring engineering fees. Such expenses were \$0.6 million and \$1.1 million for the quarters ended December 31, 2001 and December 31, 2000, respectively. The decrease in research and development costs from the prior year's quarter was primarily due to lower salary and other employee related costs, as a result of the restructuring implemented in August 2001. Additionally, in the fiscal December 31, 2001 quarter, there were lower consulting costs than in the prior fiscal year, as the prior year had included charges related to consultants who had been retained to assist the Company with

certain non-recurring engineering related to the Company's Replica Tape product and payments to Miramar for development work related to FastforwardDNA. Charges for depreciation were also lower in the December 31, 2001 quarter than in the December 31, 2000 quarter. The Company expects to continue to invest in development for which it believes there is a need in the eSupport market; however, the research and development programs invested in by the Company may not be successful and any products resulting from such programs may not achieve market acceptance.

**SALES AND MARKETING.** Sales and marketing expenses consist primarily of the salaries, commissions and employment benefits of sales and marketing personnel, and consulting, advertising, promotion, travel and other overhead expenses. Such expenses were \$1.4 million for the quarter ended December 31, 2001 and \$1.7 million for the quarter ended December 31, 2000. Expenses in the December 2001 quarter were less than those in the December 2000 quarter primarily due to the closure of the Company's sales office in the United Kingdom, as part of the August 2001 restructuring discussed above. Additionally, there were lower travel expenses incurred in the fiscal 2002 quarter than in the fiscal 2001 quarter. In light of the Company's current focus on marketing and sales efforts in North America, consolidated sales and marketing expenses are expected to remain a significant ongoing operating expense.

**GENERAL AND ADMINISTRATIVE.** General and administrative expenses are comprised primarily of salaries for administrative and corporate services personnel, legal, and other professional fees. Such expenses were \$0.7 million for the quarter ended December 31, 2001 and \$0.6 million for the quarter ended December 31, 2000. The increase in expenses in the quarter ended December 31, 2001 from the quarter ended December 31, 2000 is primarily due to legal charges incurred in relation to litigation as the Company continues to attempt to protect its intellectual property rights. However, there is no assurance that the Company will be successful in any litigation and in the event the Company is not successful, the Company may have to discontinue using a portion of its intellectual property or obtain a license to use such technology. These costs were partially offset by lower employee-related expenses, reflecting the effect of the August 2001 restructuring. General and administrative expenses are expected to remain a significant ongoing operating expense.

**RESTRUCTURING.** On December 31, 2001, the Company began implementation of a restructuring designed to bring costs in closer alignment with anticipated revenues. However, there is no assurance that implementation of the restructuring will bring costs in closer alignment with anticipated revenues. During the quarter the Company recorded a charge of \$0.5 million related to this restructuring. The charge included payments of severance and benefits to terminated employees (\$0.2 million) and anticipated costs for modifications to the Company's leases, reflecting the reduced work force (\$0.3 million). Payments for severance and benefits were made during the Company's first fiscal quarter. The lease modifications are expected to be completed during the second quarter of fiscal 2002.

During the fourth quarter of fiscal 2001, the Company recorded a restructuring charge to operations of \$1.0 million, representing primarily costs incurred as the Company consolidated its sales and marketing efforts to North America. The components of this charge were severance and benefits paid to terminated employees (\$0.5 million), costs associated with terminating the Company's lease in the United Kingdom and dissolving the Company's United Kingdom subsidiary (\$0.4 million) and costs associated with modifications to the lease of the Company's facility in Estonia (\$0.1 million). As of December 31, 2001, the Company had incurred and paid \$0.5 million in severance and benefits to terminated employees, \$0.3 million in costs associated with terminating the lease of the United Kingdom facility and dissolving the Company's United Kingdom

subsidiary and \$0.1 million in costs related to modifying the lease for its Estonian facility. During the first quarter of fiscal 2002, the Company reversed \$0.1 million of this charge, as the termination costs for the Company's lease of its United Kingdom office were accomplished on more favorable terms than had been originally expected. The Company expects to incur and pay the remaining accrued amounts during the second quarter of fiscal 2002.

12

The net effect in the December 31, 2001 quarter of the above activity was a \$0.4 million charge to restructuring.

INTEREST INCOME. Interest income was \$0.1 million for the quarter ended December 31, 2001 and \$0.5 million for the quarter ended December 31, 2000. The decrease in interest from the quarter ended December 31, 2001 from the quarter ended December 31, 2000 was due to lower invested cash balances, combined with lower interest rates.

INCOME TAXES. The effective tax rates for the December 2001 and 2000 quarters were based on the Company's forecasted taxable results for the year and the anticipated carry-back benefit for income taxes paid in previous years, if any. The effective income tax rate for the quarters ended December 31, 2001 and December 31, 2000 was 0% as the Company does not project taxable income or a benefit from taxes for either of these quarters, has a full valuation allowance against its deferred tax assets, and has used all its available net operating loss carrybacks.

QUARTERLY TRENDS. Fluctuations in quarterly results are expected to be significantly impacted by the cessation of revenues from discontinued product lines, ReachOut and Replica Tape. Management does not expect the revenue streams from its eSupport Essentials products to offset the decrease from the discontinued product lines until at least later in fiscal 2002, if then. In addition, the Company historically has experienced significant fluctuations in its revenues and operating results, including net income (loss), and anticipates that these fluctuations will continue. The Company operates with relatively little backlog of its perpetual software license sales, and the majority of its software revenues each quarter result from orders received in that quarter. Consequently, if near-term demand for the Company's products weakens in a given quarter, the Company's operating results for that quarter would be adversely affected. In addition, when the Company announces enhanced versions of its software products, the announcement historically has had the effect of slowing sales of the current version of the product as buyers delay their purchase. Quarterly results have been or may in the future be influenced by the timing of announcements or introductions of new products and product upgrades by the Company or its competitors, delays in product development and licensing of the Company's products and core technology. In addition, the Company's eSupport Essentials product offering often has a lengthy evaluation period before any purchase is made.

SEASONALITY. The software industry has typically experienced some seasonal variations in demand. The Company believes that its software sales are subject to similar seasonal variations which, when combined with the other factors described above, are likely to result in fluctuations in the Company's quarterly results. As a result, historical quarter-to-quarter comparisons should not be relied upon as indicative of future performance.

OPERATING SYSTEMS. eSupport Essentials server component runs on Windows NT 4.0 Server and Windows 2000 server, with client support for Windows 2000 Professional, Windows ME, Windows 98, Windows 95 and Windows NT Workstations. The Company expects to support Windows XP during calendar 2002.

FastforwardDNA runs on Windows 2000 Professional, Windows ME, Windows 98, Windows 95 and Windows NT Workstations. It is expected to run on Windows XP workstations during calendar 2002.

Future versions of Microsoft's Windows operating systems may require significant changes to the Company's products in order to maintain compatibility.

COMPETITION AND RISKS ASSOCIATED WITH NEW PRODUCT INTRODUCTIONS. The market for eSupport Essentials is intensely competitive, rapidly changing and significantly affected by new product introductions and other market activities of industry participants. Companies such as Support.com, Connected Corporation and Motive Communications, Inc. are also marketing products in the eSupport arena. Competition for eSupport Essentials and any new products the Company may offer could result in a failure to establish significant sales volume, and/or price reductions that could prevent the Company from ever becoming profitable.

Also, the Company's eSupport Essentials product may be perceived to compete with well-established back-up products from Computer Associates, Inc., Veritas Software Corporation and Legato Systems, Inc., all of which have established channels of distribution and installed customer bases. Also, eSupport Essentials is being introduced into sophisticated server environments and, while the Company has invested significant resources in testing eSupport Essentials under a variety of conditions, configurations and circumstances, there are likely to be environments which have not been anticipated for which additional development of eSupport Essentials will be necessary.

STOCK PRICE VOLATILITY. Due to the factors noted above, and general market conditions, the Company's future earnings and therefore, its stock price has been and may be subject to significant volatility, particularly on a quarterly basis. Any shortfall in earnings from levels expected by securities analysts could have an immediate and significant adverse effect on the trading price of the Company's common stock in any given period. Shortfalls in the Company's earnings could be caused by shortfalls in revenues and/or increased levels of expenditures. Additionally, the Company participates in a highly dynamic industry, which often results in significant volatility of the Company's stock price.

#### LIQUIDITY AND CAPITAL RESOURCES

The Company's cash, cash equivalents and marketable securities decreased by \$2.9 million to \$16.7 million at December 31, 2001 from \$19.6 million at September 30, 2001. The decrease was primarily due to cash used in general operations. Working capital decreased by \$2.1 million to \$16.2 million December 31, 2001 from \$18.3 million at September 30, 2001.

The Company believes that existing cash balances and funds provided by operations will be sufficient to finance the working capital requirements of the consolidated company for at least the next twelve months.

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

The Company is exposed to a variety of risks, including foreign currency fluctuations and changes in the market value of its investments. In the

normal course of business, the Company employs established policies and procedures to manage its exposure to fluctuations in foreign currency values and changes in the market value of its investments.

The Company's foreign currency risks are mitigated principally by maintaining only nominal foreign currency cash balances. Working funds necessary to facilitate the short term operations of the Company's subsidiary in the United Kingdom (which is currently being dissolved) were kept in the local currencies for the European countries in which it did business, with excess funds converted to United States currency and transferred to Previo's offices in the United States for investment. With the closure of the United Kingdom office, these foreign currency accounts are being closed. The Company also maintains an operating account in Estonia to fund its operations there. Disbursements are made from that account, and are then reimbursed on a regular basis. Expenses incurred may change in relation to fluctuations in the exchange rate.

PART II-OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On March 15, 2001, the Company filed suit in the U.S. District Court for the Northern District of California against Support.com for infringement of Previo's U.S. Patent No. 5,778,395. In the suit, Previo alleges that Support.com is selling software products that infringe Previo's valuable patent. Previo seeks compensation and a permanent injunction against Support.com's continuing infringement.

On May 1, 2001, the Company filed suit in the U.S. District Court for the Northern District of California against Connected Corporation ("Connected") for infringement of Previo's U.S. Patent No. 5,778,395. In the suit, Previo alleges that Connected Corporation is selling software products that infringe Previo's valuable patent. Previo seeks compensation and a permanent injunction against Connected's continuing infringement. On July 3, 2001 Connected filed a separate suit against Previo, claiming the Company is selling software products that infringe on its Patent No. 5,765,163, and seeking preliminary and permanent injunctions. The Company believes this suit is retaliatory and without merit and has asked the court to combine it with the suit it previously filed.

In addition, from time to time the Company is involved in certain litigation arising out of its operations.

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

Not Applicable

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not Applicable

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not Applicable



ITEM 5. OTHER INFORMATION  
Not Applicable

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

Exhibit 10.1 2002 Equity Incentive Plan (amendment and restatement of  
1992 Stock Option Plan)

16

SIGNATURES

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

Previo, Inc.

Date: February 12, 2002

/s/ Clifford L. Flowers

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Clifford L. Flowers  
(Vice President of Finance,  
Chief Financial Officer and  
Principal Financial and Accounting  
Officer)

Date: February 12, 2002

/s/ Tom Dilatush

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Tom Dilatush  
(Chief Executive Officer and  
Duly Authorized Officer)

17

EXHIBIT 10.1

2002 EQUITY INCENTIVE PLAN  
(AMENDMENT AND RESTATEMENT OF 1992 STOCK OPTION PLAN)

PREVIO, INC.

1992 STOCK OPTION PLAN

Adopted March 13, 1992

As Amended by the Board of Directors on  
January 18, 1996, January 22, 1999 and October 25, 2001

1. PURPOSES.

- (a) The purpose of the Plan is to provide a means by which selected Employees and Directors of and Consultants to the Company, and its Affiliates, may be given an opportunity to purchase stock of the Company.
- (b) The Company, by means of the Plan, seeks to retain the services of persons who are now Employees or Directors of or Consultants to the Company, to secure and retain the services of new Employees, Directors and Consultants, and to provide incentives for such persons to exert maximum efforts for the success of the Company.
- (c) The Company intends that the Options issued under the Plan shall, in the discretion of the Board or any Committee to which responsibility for administration of the Plan has been delegated pursuant to subsection 3(c), be either Incentive Stock Options or Nonstatutory Stock Options. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and in such form as issued pursuant to section 6, and a separate certificate or certificates will be issued for shares purchased on exercise of each type of Option.

2. DEFINITIONS.

- (a) "AFFILIATE" means any parent corporation or subsidiary corporation, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f) respectively, of the Code.
- (b) "BOARD" means the Board of Directors of the Company.
- (c) "CODE" means the Internal Revenue Code of 1986, as amended.
- (d) "COMMITTEE" means a Committee appointed by the Board in accordance with

subsection 3(c) of the Plan.

- (e) "COMPANY" means Previo, Inc., a Delaware corporation.
- (f) "CONSULTANT" means any person, including an advisor, engaged by the Company or an Affiliate to render services and who is compensated for such services, provided that the term "Consultant" shall not include Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors.

1

- (g) "CONTINUOUS STATUS AS AN EMPLOYEE, DIRECTOR OR CONSULTANT" means the employment or relationship as a Director or Consultant is not interrupted or terminated by the Company or any Affiliate. The Board, in its sole discretion, may determine whether Continuous Status as an Employee, Director or Consultant shall be considered interrupted in the case of: (i) any leave of absence approved by the Board, including sick leave, military leave, or any other personal leave; provided, however, that for purposes of Incentive Stock Options, any such leave may not exceed ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract (including certain Company policies) or statute; or (ii) transfers between locations of the Company or between the Company, Affiliates or its successors. The term of each Option may be extended at the discretion of the Board (but not beyond ten (10) years from the date of original grant) for the period of any such approved leave of absence.
- (h) "COVERED EMPLOYEE" means the Chief Executive Officer and the four (4) other highest compensated officers of the Company.
- (i) "DIRECTOR" means a member of the Board.
- (j) "DISABILITY" means total and permanent disability as defined in Section 22(e)(3) of the Code.
- (k) "DISINTERESTED PERSON" means a Director: (i) who was not during the one year prior to service as an administrator of the Plan granted or awarded equity securities pursuant to the Plan or any other plan of the Company or any of its affiliates, entitling the participants therein to acquire equity securities of the Company or any of its affiliates except as permitted by Rule 16b-3(c)(2)(i); or (ii) who is otherwise considered to be a "disinterested person" in accordance with Rule 16b-3(c)(2)(i), or any other applicable rules, regulations or interpretations of the Securities and Exchange Commission.
- (l) "EMPLOYEE" means any person, including Officers and Directors, employed by the Company or any Affiliate of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

- (m) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.
- (n) "FAIR MARKET VALUE" means, as of any date, the value of the common stock of the Company determined as follows:
  - (1) If the common stock of the Company is listed on any established stock exchange or traded on a national market system, including without limitation the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of the Company's common stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Company's common stock) on the last market trading day prior to the day of determination, as reported in THE WALL STREET JOURNAL or such other source as the Board deems reliable.
  - (2) In the absence of such markets for the Company's common stock, the Fair Market Value shall be determined in good faith by the Board.
- (o) "INCENTIVE STOCK OPTION" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.
- (p) "NONSTATUTORY STOCK OPTION" means an Option not intended to qualify as an Incentive Stock Option.
- (q) "OFFICER" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.
- (r) "OPTION" means a stock option granted pursuant to the Plan.

- (s) "OPTION AGREEMENT" means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.
- (t) "OPTIONED STOCK" means the common stock of the Company subject to an Option.
- (u) "OPTIONEE" means an Employee, Director or Consultant who holds an outstanding Option.
- (v) "OUTSIDE DIRECTOR" means a Director who either (i) is not a current employee of the Company or an "AFFILIATED CORPORATION" (as defined in

the Treasury regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company of an affiliated corporation receiving compensation for prior services (other than benefits under a tax qualified pension plan), as not an officer of the Company or an affiliated corporation at any time, and is not currently receiving direct or indirect remuneration in any capacity other than as a Director, or (ii) is otherwise considered an "OUTSIDE DIRECTOR" for purposes of Section 162(m) of the Code.

- (w) "PLAN" means this 1992 Stock Option Plan.
- (x) "RULE 16B-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.
- (y) "SECURITIES ACT" means the Securities Act of 1933, as amended.

### 3. ADMINISTRATION.

- (a) The Plan shall be administered by the Board unless and until the Board delegates administration to a Committee, as provided in subsection 3(c).
- (b) The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:
  - (1) To determine from time to time which of the persons eligible under the Plan shall be granted Options; when and how the Option shall be granted; whether the Option will be an Incentive Stock Option or a Nonstatutory Stock Option; the provisions of each Option granted (which need not be identical), including the time or times such Option may be exercised in whole or in part; and the number of shares for which an Option shall be granted to each such person.
  - (2) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
  - (3) To amend the Plan as provided in Section 11.
  - (4) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company.
- (c) The Board may delegate administration of the Plan to one or more committees composed of not fewer than two (2) members (a "Committee"), all of the members of which Committee shall be Disinterested Persons and may also be, in the discretion of the Board, Outside Directors. If

administration is delegated to a Committee, such Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board (and references in this Plan to the Board shall thereafter be to such Committee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may

be adopted from time to time by the Board. The Board may abolish such Committee at any time and revest in the Board the administration of the Plan. Notwithstanding anything in this Section 3 to the contrary, the Board or the Committee may delegate to a committee of one or more members of the Board the authority to grant Options to eligible persons who (1) are not then subject to Section 16 of the Exchange Act and/or (2) are either (i) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Option, or (ii) not persons with respect to whom the Company wishes to comply with Section 162 (m) of the Code.

- (d) Any requirement that an administrator of the Plan be a Disinterested Person shall not apply (i) prior to the date of the first registration of an equity security of the Company under Section 12 of the Exchange Act, or (ii) if and to the extent the Board or the Committee expressly declares that such requirement shall not apply. Any Disinterested Person shall otherwise comply with the requirements of Rule 16b-3.

4. SHARES SUBJECT TO THE PLAN.

- (a) Subject to the provisions of Section 10 relating to adjustments upon changes in stock, the stock that may be sold pursuant to exercises of Options shall not exceed in the aggregate twelve million three hundred seventy-three thousand three hundred sixty-three (12,373,363) shares of the Company's common stock; provided, however, that if any Option granted under the Plan shall for any reason expire or otherwise terminate without having been exercised in full, the stock not purchased under such Option shall revert to and again become issuable under the Plan.
- (b) The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

- (a) Incentive Stock Options may be granted only to Employees. Nonstatutory Stock Options may be granted only to Employees, Directors or Consultants.
- (b) A Director shall in no event be eligible for the benefits of the Plan unless at the time discretion is exercised in the selection of the Director as a person to whom Options may be granted, or in the

determination of the number of shares which may be covered by Options granted to the Director: (i) the Board has delegated its discretionary authority over the Plan to a Committee which consists solely of Disinterested Persons; or (ii) the Plan otherwise complies with the requirements of Rule 16b-3. The Board shall otherwise comply with the requirements of Rule 16b-3. This subsection 5(b) shall not apply (i) prior to the date of the first registration of an equity security of the Company under Section 12 of the Exchange Act, or (ii) if and to the extent the Board or Committee expressly declares that it shall not apply.

- (c) No person shall be eligible for the grant of an Incentive Stock Option if, at the time of grant, such person owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates unless the exercise price of such Incentive Stock Option is at least one hundred ten percent (110%) of the fair market value of such stock at the date of grant and the Incentive Stock Option is not exercisable after the expiration of five (5) years from the date of grant.
- (d) No employee shall be eligible to be granted in any calendar year Options covering more than 3% of the total number of shares of the Company's common stock outstanding on the record date for the Company's 1996 Annual Meeting of Shareholders.

## 6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

- (a) **TERM.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.
- (b) **PRICE.** The exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the fair market value of the stock subject to the Option on the date the Option is granted. The exercise price of each Nonstatutory Stock Option shall be not less than fifty percent (50%) of the fair market value of the stock subject to the Option on the date the Option is granted.
- (c) **CONSIDERATION.** The purchase price of stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in cash at the time the option is

exercised, or (ii) at the discretion of the Board or the Committee, either at the time of the grant or exercise of the Option, (A) by delivery to the Company of other common stock of the Company, (B) according to a deferred payment or other arrangement (which may include, without limiting the generality of the foregoing, the use of other common stock of the Company) with the person to whom the Option is granted or to whom the Option is transferred pursuant to subsection 6(d), or (C) in any other form of legal consideration that may be acceptable to the Board.

In the case of any deferred payment arrangement, interest shall be payable at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

- (d) TRANSFERABILITY. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Incentive Stock Option is granted only by such person. A Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Option is granted only by such person. The person to whom the Option is granted may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionee, shall thereafter be entitled to exercise the Option.
- (e) VESTING. The total number of shares of stock subject to an Option may, but need not, be allotted in periodic installments (which may, but need not, be equal). The Option Agreement may provide that from time to time during each of such installment periods, the Option may become exercisable ("vest") with respect to some or all of the shares allotted to that period, and may be exercised with respect to some or all of the shares allotted to such period and/or any prior period as to which the Option became vested but was not fully exercised. During the remainder of the term of the Option (if its term extends beyond the end of the installment periods), the Option may be exercised from time to time with respect to any shares then remaining subject to the Option. The provisions of this subsection 6(e) are subject to any Option provisions governing the minimum number of shares as to which an Option may be exercised.
- (f) SECURITIES LAW COMPLIANCE. The Company may require any Optionee, or any person to whom an Option is transferred under subsection 6(d), as a condition of exercising any such Option, (1) to give written assurances satisfactory to the Company as to the Optionee's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters, and that he or she is capable of evaluating, alone or together with the



purchaser representative, the merits and risks of exercising the Option; and (2) to give written assurances satisfactory to the Company stating that such person is acquiring the stock subject to the Option for such person's own account and not with any present intention of selling or otherwise distributing the stock. These requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise of the Option has been registered under a then currently effective registration statement under the Securities Act, or (ii) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws.

- (g) TERMINATION OF EMPLOYMENT OR RELATIONSHIP AS A DIRECTOR OR CONSULTANT. In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates (other than upon the Optionee's death or Disability), the Optionee may exercise his or her Option, but only within such period of time as is determined by the Board, and only to the extent that the Optionee was entitled to exercise it at the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the case of an Incentive Stock Option, the Board shall determine such period of time (in no event to exceed three (3) months from the date of termination) when the Option is granted. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become issuable under the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate, and the shares covered by such Option shall revert to and again become issuable under the Plan.
- (h) DISABILITY OF OPTIONEE. In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option, but only within twelve (12) months from the date of such termination (or such shorter period specified in the Option Agreement), and only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become issuable under the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become issuable

under the Plan.

- (i) DEATH OF OPTIONEE. In the event of the death of an Optionee, the Option may be exercised, at any time within twelve (12) months following the date of death (or such shorter period specified in the Option Agreement) (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death. If, at the time of death, the Optionee was not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become issuable under the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become issuable under the Plan.
- (j) EARLY EXERCISE. The Option may, but need not, include a provision whereby the Optionee may elect at any time while an Employee, Director or Consultant to exercise the Option as to any part or all of the shares subject to the Option prior to the full vesting of the Option. Any unvested shares so purchased may be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate.
- (k) WITHHOLDING. To the extent provided by the terms of an Option Agreement, the Optionee may satisfy any federal, state or local tax withholding obligation relating to the exercise of such Option by any of the following means or by a combination of such means: (1) tendering a cash payment; (2) authorizing the Company to withhold shares from the shares of the common stock otherwise issuable to the participant as a result of the exercise of the Option; or (3) delivering to the Company owned and unencumbered shares of the common stock of the Company.

6

## 7. COVENANTS OF THE COMPANY.

- (a) During the terms of the Options, the Company shall keep available at all times the number of shares of stock required to satisfy such Options.
- (b) The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act either the Plan, any Option or any stock issued or issuable pursuant to any such Option. If,

after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

8. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

9. MISCELLANEOUS.

- (a) The Board shall have the power to accelerate the time at which an Option may first be exercised or the time during which an Option or any part thereof will vest pursuant to subsection 6(e), notwithstanding the provisions in the Option stating the time at which it may first be exercised or the time during which it will vest.
- (b) Neither an Optionee nor any person to whom an Option is transferred under subsection 6(d) shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such person has satisfied all requirements for exercise of the Option pursuant to its terms.
- (c) Throughout the term of any Option, the Company shall make available to the holder of such Option, not later than one hundred twenty (120) days after the close of each of the Company's fiscal years during the Option term, such financial and other information regarding the Company as comprises the annual report to the stockholders of the Company provided for in the bylaws of the Company.
- (d) Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Employee, Director, Consultant or Optionee any right to continue in the employ of the Company or any Affiliate (or to continue acting as a Director or Consultant) or shall affect the right of the Company or any Affiliate to terminate the employment or relationship as a Director or Consultant of any Employee, Director, Consultant or Optionee with or without cause.
- (e) To the extent that the aggregate fair market value (determined at the time of grant) of stock with respect to which Incentive Stock Options granted after 1986 are exercisable for the first time by any Optionee during any calendar year under all plans of the Company and its Affiliates exceeds one hundred thousand dollars (\$100,000), the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

10. ADJUSTMENTS UPON CHANGES IN STOCK.

- (a) CAPITALIZATION ADJUSTMENTS. If any change is made in the Company's common stock subject to the Plan, or subject to any Option, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted

7

in the class(es) and maximum number of securities subject to the Plan pursuant to subsection 4(a) and the maximum number of securities subject to award to any person pursuant to subsection 5(d), and the outstanding Options will be appropriately adjusted in the class(es) and number of securities and price per share of the Company's common stock subject to such outstanding Options. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

- (b) DISSOLUTION OR LIQUIDATION. In the event of a dissolution or liquidation of the Company, then all outstanding Options shall terminate immediately prior to such event.
- (c) ASSET SALE, MERGER, CONSOLIDATION OR REVERSE MERGER. In the event of (i) a sale, lease or other disposition of all or substantially all of the assets of the Company, (ii) a merger or consolidation in which the Company is not the surviving corporation or (iii) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise (individually, a "Corporate Transaction"), then any surviving corporation or acquiring corporation shall assume any Options outstanding under the Plan or shall substitute similar options (including an option to acquire the same consideration paid to the shareholders in the Corporate Transaction for those outstanding under the Plan). In the event any surviving corporation or acquiring corporation refuses to assume such Options or to substitute similar options for those outstanding under the Plan, then with respect to Options held by Optionees whose Continuous Status as an Employee, Director or Consultant has not terminated, the vesting of such Options (and, if applicable, the time during which such Options may be exercised) shall be accelerated in full, and the Options shall terminate if not exercised at or prior to the Corporate Transaction. With respect to any other Options outstanding under the Plan, such Options shall terminate if not exercised at or prior to the Corporate

Transaction.

11. AMENDMENT OF THE PLAN.

- (a) The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 10 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company within twelve (12) months before or after the adoption of the amendment, where the amendment will:
- (1) Increase the number of shares reserved for options under the Plan;
- (2) Modify the requirements as to eligibility for participation in the Plan (to the extent such modification requires stockholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code);  
or
- (3) Modify the Plan in any other way if such modification requires stockholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code or to comply with the requirements of Rule 16b-3.
- (b) It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide Optionees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.
- (c) Rights and obligations under any Option granted before amendment of the Plan shall not be altered or impaired by any amendment of the Plan unless (i) the Company requests the consent of the person to whom the Option was granted and (ii) such person consents in writing.
- (d) The Board may in its sole discretion submit any other amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) of the Code and the regulations promulgated thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to certain executive officers.

12. TERMINATION OR SUSPENSION OF THE PLAN.

- (a) The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on March 12, 2012. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) Rights and obligations under any Option granted while the Plan is in effect shall not be altered or impaired by suspension or termination of the Plan, except with the consent of the person to whom the Option was granted.

13. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board, but no Options granted under the Plan shall be exercised unless and until the Plan has been approved by the stockholders of the Company, and, if required, an appropriate permit has been issued by the Commissioner of Corporations of the State of California.