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**ARTICLE IX**

No director of the Corporation shall have any personal liability to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that this provision eliminating such personal liability of a director shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under §174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

**ARTICLE X**

All of the powers of this Corporation, insofar as the same may be lawfully vested by this Certificate of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors of this Corporation.

**ARTICLE XI**

The election of directors need not be by written ballot unless otherwise provided in the bylaws of the Corporation.

**ARTICLE XII**

The Corporation elects not to be governed by Section 203 of the Delaware General Corporation Law.

**ARTICLE XIII**

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; *provided, however*, that, notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal this Article XIII, Article V, Article VI, Article VIII or Article IX.

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**ARTICLE XIV**

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The name and address of the Sole Incorporator is as follows:

Dalen Copeland  
402 West Broadway, Suite 2300  
San Diego, CA 92101

*[Remainder of Page Intentionally Left Blank]*

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**In Witness Whereof**, this Certificate has been subscribed this     th day of                             , 200    by the undersigned who affirms that the statements made herein are true and correct.

Dalen Copeland  
Sole Incorporator

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**Appendix D**

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION**

IT&E International, Inc.(the Corporation ), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the Corporation ) does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of the Corporation resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and that the directors took action to authorize this amendment pursuant to authority granted by a majority of the Stockholders of the Corporation pursuant to the bylaws of the Corporation and Section 228 of the General Corporation Law of the State of Delaware. The resolution setting forth the proposed amendment is as follows:

**RESOLVED,** that the Certificate of Incorporation of the Corporation be amended by inserting the following paragraph following the current text of Article IV:

(D) **Reverse Stock Split** Upon this Certificate of Amendment becoming effective pursuant to the General Corporation Law of the State of Delaware (the *Effective Time* ), each ( ) shares of the Corporation s common stock, par value \$.001 per share, issued and outstanding immediately prior to the Effective Time will be and is automatically reclassified as and converted (without any further act) into one (1) fully-paid and nonassessable share of common stock, par value \$.001 per share, of the Corporation; provided, however, that no fractional shares of common stock of the Corporation shall be issued and in lieu of any fractional shares of common stock of the Corporation which any stockholder would otherwise be entitled to receive pursuant hereto, such stockholder shall be entitled to receive from the Corporation one additional share of common stock of the Corporation.

**SECOND:** That thereafter, in accordance with Section 228 of the General Corporation Law of the State of Delaware, a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, approved the foregoing amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Peter Sollenne, Chief Executive Officer

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**CERTIFICATE OF  
DESIGNATIONS, PREFERENCES, AND RIGHTS**

of

**SERIES D CONVERTIBLE PREFERRED STOCK**

of

**IT&E INTERNATIONAL, INC.**

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

IT&E INTERNATIONAL, INC. a corporation organized and existing under the Delaware General Corporation Law (the **Corporation** ), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation on October 31, 2005 pursuant to the authority of the Board of Directors as required by Section 151 of the Delaware General Corporation Law.

**RESOLVED**, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (the **Board of Directors** or the **Board** ) in accordance with the provisions of its Articles of Incorporation, as amended, the Board of Directors hereby authorizes a series of the Corporation's previously authorized Preferred Stock, par value \$.001 per share, and hereby states the designation and number of shares, and fixes the relative rights, preferences, privileges, powers and restrictions thereof as follows:

Series D Convertible Preferred Stock:

**I. DESIGNATION AND AMOUNT**

The designation of this series, which consists of Sixteen Thousand Five Hundred (16,500) shares of Preferred Stock, is Series D Convertible Preferred Stock (the **Series D Preferred Stock** ) and the stated value shall be One Thousand dollars (\$1,000.00) per share (the **Stated Value** ).

**II. RANK**

The Series D Preferred Stock shall rank (i) prior to the Corporation's common stock, par value \$.001 per share (the **Common Stock** ); (ii) prior to any class or series of capital stock of the Corporation hereafter created (collectively, with the Common Stock, **Junior Securities** ); (iii) *pari passu* with any class or series of capital stock of the Corporation hereafter created (with the consent of the holders of Series D Preferred Stock obtained in accordance with Article VII hereof) specifically ranking, by its terms, on parity with the Series D Preferred Stock ( **Pari Passu Securities** ); and (iv) junior to any class or series of capital stock of the Corporation hereafter created (with the consent of the holders of Series D Preferred Stock obtained in accordance with Article VII hereof) specifically ranking, by its terms, senior to the Series D Preferred Stock ( **Senior Securities** ), in each case as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

**III. DIVIDENDS**

The holders of Series D Preferred Stock are not entitled to receive dividends.

**IV. LIQUIDATION PREFERENCE**

A. **Liquidation Event.** If the Corporation shall commence a voluntary case under the Federal bankruptcy laws or any other applicable Federal or State bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any law or to the appointment of a receiver,



liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of thirty (30) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (each such event being considered a **Liquidation Event**), no distribution shall be made to the holders of any shares of capital stock of the Corporation upon liquidation, dissolution or winding up unless prior thereto, the holders of shares of Series D Preferred Stock, shall have received the Liquidation Preference (as defined in Article IV.C.) with respect to each share. If upon the occurrence of a Liquidation Event, the assets and funds available for distribution among the holders of the Series D Preferred Stock and holders of *Pari Passu* Securities (including any dividends or distribution paid on any *Pari Passu* Securities after the date of filing of this Certificate of Designation) shall be insufficient to permit the payment to such holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to the Series D Preferred Stock and the *Pari Passu* Securities shall be distributed ratably among such shares in proportion to the ratio that the Liquidation Preference payable on each such share bears to the aggregate Liquidation Preference payable on all such shares. Any prior dividends or distribution made after the date of filing of this Certificate of Designation shall offset, dollar for dollar, the amount payable to the class or series to which such distribution was made. Once the holders of the Series D Preferred Stock receive their full Liquidation Preference, then the holders of the Series D Preferred Stock shall be treated as *Pari Passu* with the holders of Common Stock, as if the holders of the Series D Preferred Stock had converted their Series D Preferred Stock into Common Stock.

B. **Certain Acts Deemed Liquidation Event.** For purposes of IV.A section, a merger or consolidation, where existing stockholders do not retain more than 50% of the voting power or interest, a sale of all or a substantial part of the Corporation's assets, or an acquisition of 50% or more of the voting power or interest in the corporation by a single person or a Group within the meaning of Section 13(d)(3) under the Exchange Act shall be deemed to be a Liquidation Event for purposes hereof.

C. **Liquidation Preference.** For purposes hereof the **Liquidation Preference** with respect to a share of the Series D Preferred Stock shall mean an amount equal to the Stated Value, subject to appropriate adjustments in the event of any stock dividend, subdivision, combination or reclassification affecting such shares, plus any distributions paid to the holders of Common Stock that the holders of the Series D Preferred Stock would receive if the Series D Preferred Stock had been converted, on a pro rata basis with all other holders of Common Stock.

## V. CONVERSION AT THE OPTION OF THE HOLDER

A. **Optional Conversion.** Each holder of shares of Series D Preferred Stock may, at its option at any time and from time to time, upon surrender of the certificates therefor, convert any or all of its shares of Series D Preferred Stock into Common Stock as set forth below (an **Optional Conversion**). Each share of Series D Preferred Stock shall be convertible into shares of Common Stock based upon the Conversion Ratio, for purposes hereof, Conversion Ratio shall mean the quotient arrived at by dividing the Stated Value by the Conversion Price subject to adjustment as hereinafter provided and the conversion price shall initially be \$0.07 (the **Conversion Price**).

B. **Adjustment Provisions.** The Conversion Price and number and kind of shares or other securities to be issued upon conversion determined pursuant to this Certificate of Designation shall be subject to adjustment from time to time upon the happening of certain events, as follows:

(a) **Reclassification.** If the Corporation at any time shall, by reclassification or otherwise, change the Common Stock into the same or a different number of securities of any class or classes, the Series D Preferred Stock, shall thereafter be deemed to evidence the right to convert the Series D Preferred Stock into an adjusted number of such securities and kind of securities as would have been issuable as the result of such change with respect to the Common Stock (i) immediately prior to, or (ii) immediately after, such reclassification or other change at the sole election of the holder of the Series D Preferred Stock.

(b) **Stock Splits, Combinations and Dividends.** If the shares of Common Stock are subdivided or combined into a greater or smaller number of shares of Common Stock, or if a dividend is paid on the Common Stock or any preferred stock issued by the Corporation in shares of Common Stock, the Conversion Price shall be proportionately reduced in case of subdivision of shares or stock dividend or proportionately increased in the case of combination of shares, in each such case by the ratio which the total number of shares of Common Stock outstanding immediately after such event bears to the total number of shares of Common Stock outstanding immediately prior to such event.

(c) **Share Issuances.** If and whenever the Company issues or sells, or in accordance with Section V.B.(c) hereof is deemed to have issued or sold, any shares of Common Stock for an effective consideration per share of less than the then Conversion Price or for no consideration, then, the Conversion Price shall be adjusted as set forth in this Section V.B.(c). Such adjustment shall be made whenever shares of Common Stock or an instrument convertible into Common Stock are issued (except (i) pursuant to Sections V.B.(a) or (b) above; (ii) for an Exempt Issuance). For purposes of this Section an **Exempt Issuance** shall mean the issuance of (a) shares of Common Stock options or shares of Common Stock issued upon the exercise of any such options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise of or conversion of any convertible securities, options or warrants issued and outstanding on November 9, 2005, provided that such securities have not been amended, (c) the securities issued or issuable hereunder or pursuant to the Securities Purchase Agreement between the Corporation and the Holder, dated as of the date hereof, (d) issuances in connection with mergers, acquisitions, joint ventures or other transactions with an unrelated third party in a bona fide transaction the purpose of which is not fundraising, or (e) issuances at fair market value to the Corporation's suppliers, consultants and other providers of services and goods not to exceed \$100,000 to any one Person, and not to exceed an aggregate of \$250,000 in any fiscal year without the prior written consent of the Holder. For purposes hereof, the issuance of any security of the Corporation convertible into or exercisable or exchangeable for Common Stock shall result in an adjustment to the Conversion Price upon the issuance of such securities pursuant to the formula below.

If the Corporation issues any additional shares of Common Stock for a consideration per share less than the then-applicable Conversion Price pursuant to this Section V.B. then, and thereafter successively upon each such issue, the Conversion Price shall be adjusted by multiplying the then applicable Conversion Price by the following fraction:

$$\frac{A + B}{(A + B) + [(C - D) \times B] / C}$$

A = Total amount of common shares issuable upon conversion of the Series D Preferred Stock

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B = Actual shares sold in the offering

C = Conversion Price

D = Offer Price

(d) **Computation of Consideration.** For purposes of any computation respecting consideration received pursuant to Section V.B.(c) above, the following shall apply:

(i) in the case of the issuance of shares of Common Stock for cash, the consideration shall be the amount of such cash, provided that in no case shall any deduction be made for any commissions, discounts or other expenses incurred by the Corporation for any underwriting of the issue or otherwise in connection therewith;

(ii) in the case of the issuance of shares of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors of the Corporation (irrespective of the accounting treatment thereof); and

(iii) upon any such exercise, the aggregate consideration received for such securities shall be deemed to be the consideration received by the Corporation for the issuance of such securities plus the additional minimum consideration, if any, to be received by the Corporation upon the conversion or exchange thereof (the consideration in each case to be determined in the same manner as provided in subsections (i) and (ii) of this Section V.B.(d)).

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

(f) **Readjustment.** If, at any time after any adjustment of the Conversion Price shall have been made pursuant to Section V.B.(c) as the result of any issuance of warrants, rights or convertible securities, and either (1) such warrants or rights, or the rights of conversion or exchange in such other convertible securities, shall expire, and all or a portion of such warrants or rights, or the right of conversion or exchange with respect to all or a portion of such other convertible securities, as the case may be, shall not have been exercised, or (2) the consideration per share for which shares of Common Stock are issuable pursuant to such warrants or rights, or such other convertible securities, shall be increased or decreased by virtue of provisions therein contained, then such previous adjustments shall be rescinded and annulled and the additional shares of Common Stock which were deemed to have been issued by virtue of the computation made in connection with the adjustment so rescinded and annulled shall no longer be deemed to have been issued by virtue of such computation. Thereupon, a recomputation shall be made of the effect of such rights or options or other convertible securities on the then outstanding Warrants, but not on any then outstanding Warrant Shares, on the basis of (x) treating the number of additional shares of Common Stock or other property, if any, theretofore actually issued or issuable pursuant to the previous exercise of any such warrants or rights or any such right of conversion or exchange, as having been issued on the date or dates of any such exercise and for the consideration actually received and receivable therefor, and (y) treating any such warrants or rights or any such other convertible securities which then remain outstanding as having been granted



or issued immediately after the time of such increase or decrease of the consideration per share for which shares of Common Stock or other property are issuable under such warrants or rights or other convertible securities.

(g) **Change in Option Price or Conversion Rate.** If there is a change at any time in (i) the amount of additional consideration payable to the Corporation upon the exercise of any options; (ii) the amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange of any warrants or rights, or such other convertible securities; or (iii) the rate at which any warrants or rights, or such other convertible securities, are convertible into or exchangeable for Common Stock (in each such case, other than under or by reason of provisions designed to protect against dilution), the Common Conversion Price or Preferred Conversion Price in effect at the time of such change will be readjusted to the Common Conversion Price or Preferred Conversion Price which would have been in effect at such time had such Options, warrants or rights, or such other convertible securities still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

c. **Mechanics of Conversion.** In order to convert Series D Preferred Stock into full shares of Common Stock, a holder of Series D Preferred Stock shall: (i) submit a copy of the fully executed notice of conversion in the form attached hereto as *Exhibit A* ( **Notice of Conversion** ) to the Corporation by facsimile dispatched prior to Midnight, New York City time (the **Conversion Notice Deadline** ) on the date specified therein as the Conversion Date (as defined herein) (or by other means resulting in, or reasonably expected to result in, notice to the Corporation on the Conversion Date) to the office of the Corporation or its designated Transfer Agent for the Series D Preferred Stock, which notice shall specify the number of shares of Series D Preferred Stock to be converted, the Conversion Price and a calculation of the number of shares of Common Stock issuable upon such conversion (together with a copy of the first page of each certificate to be converted); and (ii) surrender the original certificates representing the Series D Preferred Stock being converted (the **Preferred Stock Certificates** ), duly endorsed, along with a copy of the Notice of Conversion to the office of the Corporation or the Transfer Agent for the Series D Preferred Stock as soon as practicable thereafter. The Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion, unless either the Preferred Stock Certificates are delivered to the Corporation or its Transfer Agent as provided above, or the holder notifies the Corporation or its Transfer Agent that such certificates have been lost, stolen or destroyed (subject to the requirements of subparagraph (a) below). In the case of a dispute as to the calculation of the Conversion Ratio, the Corporation shall promptly issue such number of shares of Common Stock that are not disputed in accordance with subparagraph (b) below. The Corporation shall submit the disputed calculations to its outside accountant via facsimile within five (5) business days of receipt of the Notice of Conversion. The accountant shall audit the calculations and notify the Corporation and the holder of the results no later than 72 hours from the time it receives the disputed calculations. The accountant's calculation shall be deemed conclusive absent manifest error.

(a) **Lost or Stolen Certificates.** Upon receipt by the Corporation of evidence of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing shares of Series D Preferred Stock, and (in the case of loss, theft or destruction) of indemnity reasonably satisfactory to the Corporation, and upon surrender and cancellation of the Preferred Stock Certificate(s), if mutilated, the Corporation shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date.

(b) **Delivery of Common Stock Upon Conversion.** Upon the surrender of certificates as described above together with a Notice of Conversion, the Corporation shall promptly issue after such surrender (or, in the case of lost, stolen or destroyed certificates, after provision of agreement and indemnification pursuant to subparagraph (a) above), deliver (or cause its Transfer Agent to so issue and deliver) to or upon the order of the holder (i) that number of shares of Common Stock for the portion of the shares of Series D Preferred Stock converted as shall be determined in accordance herewith and (ii) a certificate representing the balance of the shares of Series D Preferred Stock not converted, if any.

(c) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of shares of Series D Preferred Stock or the issuance of Series D Preferred Stock dividends. In lieu of any fractional shares to which the holder of Series D Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock. The fair market value of the Common Stock shall be deemed to be the average of the closing prices per share for the five trading days prior to the day of conversion. The number of whole shares issuable to each holder upon such conversion shall be determined on the basis of the number of shares of Common Stock issuable upon conversion of the total number of shares of Series D Preferred Stock of each holder at the time converting into Common Stock.

(d) **Conversion Date.** The **Conversion Date** shall be the date specified in the Notice of Conversion, provided that the Notice of Conversion is submitted by facsimile (or by other means resulting in, or reasonably expected to result in, notice) to the Corporation or its Transfer Agent before Midnight, New York City time, on the date so specified, otherwise the Conversion Date shall be the first business day after the date so specified on which the Notice of Conversion is actually received by the Corporation or its Transfer Agent. The person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such securities as of the Conversion Date and all rights with respect to the shares of Series D Preferred Stock surrendered shall forthwith terminate except the right to receive the shares of Common Stock or other securities or property issuable on such conversion and except that the holders preferential rights as a holder of Series D Preferred Stock shall survive to the extent the Corporation fails to deliver such securities.

D. **Reservation of Shares.** A number of shares of the authorized but unissued Common Stock sufficient to provide for the conversion of the Series D Preferred Stock outstanding (based on the Conversion Ratio then in effect) shall at all times be reserved by the Corporation, free from preemptive rights, for such conversion or exercise. In addition, if the Corporation shall issue any securities or make any change in its capital structure which would change the number of shares of Common Stock into which each share of the Series D Preferred Stock shall be convertible, the Corporation shall at the same time also make proper provision so that thereafter there shall be a sufficient number of shares of Common Stock authorized and reserved, free from preemptive rights, for conversion of the outstanding Series D Preferred Stock.

E. **Status as Stockholders.** Upon submission of a Notice of Conversion by a holder of Series D Preferred Stock, (i) the shares covered thereby (other than the shares, if any, which cannot be issued because their issuance would exceed such holder's allocated portion of the Reserved Amount or Maximum Share Amount) shall be deemed converted into shares of Common Stock and (ii) the holder's rights as a holder of such converted shares of Series D Preferred Stock shall cease and terminate, excepting only the right to receive certificates for such shares of Common Stock and to any remedies provided herein or otherwise available at law or in equity to such holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation.

## VI. VOTING RIGHTS

A. **Voting.** The holders of the Series D Preferred Stock are entitled to vote on all matters presented to the holders of the Common Stock. Each share of Series D Preferred Stock entitles the holder thereof to cast that number of votes that such holder would be entitled to cast had such holder converted its Series D Preferred Stock into shares of Common Stock as of the date immediately prior to the record date for determining our shareholders eligible to vote on any such matter.

### B. *Directors.*

(a) For so long as the Series D Preferred Stock is outstanding, the authorized number of members of the Board of Directors shall be seven (7), and the Company shall not change the authorized number of members of the Board of Directors without first obtaining the written consent, or affirmative vote at a meeting, of the holders of at least a majority of the then outstanding Series D Preferred Stock, consenting or voting (as the case may be) separately as a class.

(b) For so long as the Series D Preferred Stock is outstanding, the holders of the Series D Preferred Stock, voting as a separate class, shall be entitled to elect five (5) members to the Board of Directors and each other committee of the Board of Directors and (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors.

## VII. REDEMPTION OPTION

A. **Redemption Option of the Corporation.** The Corporation shall have the right, subject to the prior satisfaction of the conditions precedent set forth in Section B, upon delivery of written notice to the holder of Series D Preferred Stock (the **Redemption Notice**) to redeem any of the holder's Series D Preferred Stock not converted into Common Stock (a **Preferred Redemption**). The Preferred Redemption may be exercised by the Corporation by delivering the payment of the Preferred Redemption Price (as defined below) for the number of shares of Common Stock issuable upon conversion of the shares of Series D Preferred Stock being redeemed to the holder of his or her Series D Preferred Stock at the address of the holder provided to the Corporation, together with the Redemption Form attached hereto, duly completed and signed. The Common Stock issuable upon conversion of the Series D Preferred Stock being redeemed under Section VIIA shall be and are deemed to be redeemed by the Corporation as of the close of business on the latest date on which the Redemption Form is delivered to the holder (which must be at least five business days after the Redemption Notice is given) and payment made therefor. Upon receipt of the payment and the duly completed and signed Redemption Form, the holder shall deliver its Series D Preferred Stock (which is the subject of the Redemption Form), to the Corporation within three (3) business days thereafter. The **Preferred Redemption Price** shall mean \$0.001 per share of Common Stock issuable upon conversion of the Series D Preferred Stock being redeemed.

B. **Conditions Precedent to Corporation's Redemption Rights.** The Corporation's right to redeem the Series D Preferred Stock, upon the affirmative vote of a majority of the independent non-employee members of the Board of Directors, as **independent** is defined in Rule 10A-3 of the Exchange Act of 1934, approving the Preferred Redemption as described above is subject to the satisfaction of the following conditions:

(a) **Minimum Closing Price.** The closing price of the Common Stock has traded at or above a price equal to \$0.30 for a period of twenty (20) consecutive trading days prior to the Redemption Notice.

(b) **Pre-Tax Income.** The Corporation has achieved pre-tax income per share of Common Stock (calculated on a fully-diluted basis after giving effect to the issuance of the Common Stock underlying the Series D Preferred Stock, and using the Treasury Method for options and warrants) of at least

\$.015 per share for the prior trailing four quarters (excluding any non-recurring extraordinary expenses).

#### VIII. PROTECTIVE PROVISIONS

So long as any shares of Series D Preferred Stock are outstanding the Corporation shall not, without first obtaining the approval (by vote or written consent), as provided by the DGCL of the holders of at least fifty percent (50%) of the then outstanding shares of Series D Preferred Stock:

- (a) alter, amend or repeal (whether by merger, consolidation or otherwise) the rights, preferences or privileges of the Series D Preferred Stock or any capital stock of the Corporation so as to affect adversely the Series D Preferred Stock;
- (b) alter, amend or repeal, the Articles of Incorporation or By-laws, in a manner that would adversely affect the voting power of the Series D Preferred Stock or any other rights or privileges of the holders of the Series D Preferred Stock;
- (c) create any new class or series of capital stock having a preference over the Series D Preferred Stock as to distribution of assets upon liquidation, dissolution or winding up of the Corporation (as previously defined in Article II hereof, **Senior Securities** );
- (d) create any new class or series of capital stock ranking *pari passu* with the Series D Preferred Stock as to distribution of assets upon liquidation, dissolution or winding up of the Corporation (as previously defined in Article II hereof, **Pari Passu Securities** );
- (e) increase the authorized number of shares of Series D Preferred Stock,
- (f) issue any Senior Securities or *Pari Passu* Securities;
- (g) issue or sell any shares of Common Stock or securities convertible into Common stock for no consideration or for a consideration per share less than the then in effect Conversion Ratio, *except* that, no adjustment to the Conversion Ratio will be made in the case of an Exempt Issuance;
- (h) increase the par value of the Common Stock;
- (i) directly or indirectly pay or declare any dividend, make any distribution upon, redeem or repurchase any shares of capital stock (except a dividend on, or distribution upon, the Series D Preferred Stock or pursuant to a stock option or award under a plan approved by the Board of Directors); (ii) agree to any provision in any agreement that would impose any restriction on our ability to honor the exercise of any rights of the holders of the Series D Preferred Stock;
- (j) enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any of its affiliates, unless such transaction is (i) in the ordinary course of business, and (ii) upon fair and reasonable terms no less favorable to the Corporation than it would obtain in a comparable arm's length transaction with a person which is not an affiliate; or
- (k) do any act or thing not authorized or contemplated by this Certificate of Designation which would result in taxation of the holders of shares of the Series D Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

#### IX. ADDITIONAL COVENANTS

The Corporation shall, if so requested by Holder, promptly provide the following information:

- (a) **Annual Financial Statements**. Unless filed with the Securities and Exchange Commission (the **Commission** ) through EDGAR and publicly available through the EDGAR system, copies of the

consolidated balance sheet of the Corporation and its subsidiaries, as of the end of the immediately preceding fiscal year and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal year, prepared in accordance with generally accepted accounting principles and certified by a firm of independent public accountants of recognized national standing or such other independent public accountants, in either case, as unanimously selected by the Board;

(b) **Quarterly Financial Statements.** Unless filed with the Commission through EDGAR and publicly available through the EDGAR system, copies of the consolidated balance sheet of the Corporation and its subsidiaries, and the related consolidated statements of income, stockholders' equity and cash flows, unaudited but prepared in accordance with generally accepted accounting principles, such consolidated balance sheet, consolidated statements of income, stockholders' equity and cash flows to be as of the end of each quarter following the end of the immediately preceding fiscal year, in each case with comparative statements for the prior fiscal year; provided, however, that, to the extent the information in this Section IX is requested by the Holder, Holder shall hold and treat all such information confidential;

(c) **Accountant's Letters.** Copies of each accountant's management letter and other written report submitted to the Corporation by its independent public accountants in connection with an annual or interim audit of the books of the Corporation or any of its subsidiaries;

(d) **Notices.** Copies of notices of all actions that could materially and adversely affect the Corporation or any of its subsidiaries; and

(e) **Other Information.** Any other information regarding the business, prospects, financial condition, operations, property or affairs of the Corporation as Holder may reasonably request.

**[END OF IT&E INTERNATIONAL, INC. SERIES D CERTIFICATE OF DESIGNATIONS]**

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IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation this          day of                  200 .

IT&E INTERNATIONAL, INC.

By:

Peter Solenne  
Chief Executive Officer

By:

Anthony Allocca  
Secretary

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**Report of Independent Registered Public Accounting Firm**

Beckstead and Watts, LLP  
Certified Public Accountants  
2425 W Horizon Ridge Parkway  
Henderson, NV 89052  
702.257.1984 (tel)  
702.362.0540 (fax)

We have audited the accompanying restated balance sheet of IT&E International Group as of December 31, 2004, and the related restated statements of income, retained earnings, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, the financial statements referred to above, revised as described in Note 2, present fairly, in all material respects, the financial position of IT&E International Group as of December 31, 2004, and the results of its operations, equity and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 2 to the financial statements, the Company's 2004 total assets and total liabilities reported as \$6,919,018 and \$6,027,398 should have been \$4,412,156 and \$3,488,945, respectively, and retained earnings and net loss previously reported as \$7,080 and \$(499,058), respectively, should have been \$38,673 and \$(467,465), respectively. This discovery was made subsequent to the issuance of the financial statements. The financial statements have been restated to reflect this correction.

/s/ Beckstead and Watts, LLP

Henderson, Nevada  
March 22, 2005, except for Note 2, as to which the date is October 19, 2005

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**Report of Independent Registered Public Accounting Firm**

Beckstead and Watts, LLP  
Certified Public Accountants  
2425 W Horizon Ridge Parkway  
Henderson, NV 89052  
702.257.1984 (tel)  
702.362.0540 (fax)

We have audited the accompanying balance sheet of IT&E International Group (the Company), as of December 31, 2003, and the related statement of operations, stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of IT&E International Group as of December 31, 2003, and the results of its operations, equity and cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles.

/s/ Beckstead and Watts, LLP

Henderson, Nevada  
March 22, 2005

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**IT&E INTERNATIONAL GROUP**  
**Balance Sheets**

	December 31, 2004 (restated)	2003
<b>Assets</b>		
<b>Current Assets:</b>		
Cash	\$ 402,779	\$ 173,236
Accounts receivable (net of allowance for doubtful accounts of \$75,000 and \$118,118, respectively)	2,644,501	1,639,907
Unbilled revenue	133,398	195,607
Prepaid and other current assets	77,175	71,965
<b>Total Current Assets</b>	<b>3,257,853</b>	<b>2,080,715</b>
Fixed Assets, net	313,435	82,618
Loan Fees, net	807,144	
Deposits	33,724	23,382
	<b>\$ 4,412,156</b>	<b>\$ 2,186,715</b>
<b>Liabilities and Stockholders Equity</b>		
<b>Current Liabilities:</b>		
Accounts payable	\$ 596,189	\$ 254,855
Accrued payroll and employee benefits	322,300	168,296
Line of credit bank		855,015
Current portion of capital lease obligations	3,089	
Current portion of convertible note payable	666,667	
Deferred rent	30,293	
Other accrued liabilities	21,057	27,731
<b>Total Current Liabilities</b>	<b>1,639,595</b>	<b>1,305,897</b>
Long-term capital lease obligations, less current portion	16,015	
Long-term convertible note payable, less current portion	1,833,333	
	<b>3,488,945</b>	<b>1,305,897</b>
<b>Commitments and contingencies</b>		
<b>Stockholders equity:</b>		
Common stock, \$.001 par value, 70,000,000 share authorized, 19,000,000 shares issued and outstanding	19,000	19,000
Preferred stock, \$.001 par value, 5,000,000 shares authorized, 2,000,000 shares issued and outstanding	2,000	2,000
Additional paid-in capital	863,540	353,680
Retained earnings	38,673	506,138
	<b>923,213</b>	<b>880,818</b>
	<b>\$ 4,412,156</b>	<b>\$ 2,186,715</b>

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

**IT&E INTERNATIONAL GROUP**  
**Statements of Operations**

	Years ended December 31,	
	2004 (restated)	2003
Service Revenue	\$ 13,437,388	\$ 10,018,459
Reimbursement revenue	405,749	392,426
Total Revenue	13,843,137	10,410,885
Cost of Revenue	9,497,806	6,444,287
Reimbursable out-of-pocket expenses	405,749	392,426
Gross profit	3,939,582	3,574,173
Operating Expenses:		
General and administrative expenses	2,876,100	2,795,472
Sales and marketing expenses	982,077	333,730
Depreciation expense	21,588	18,438
Officer salaries	457,981	300,000
Total Operating Expenses	4,337,746	3,447,640
Net Operating Income (Loss)	(398,165 )	126,533
Other income (expense):		
Other income (expense)	32,831	(8,298 )
Interest expense	(102,131 )	(33,206 )
Total Other Income (Expense)	(69,300 )	(41,504 )
Income (Loss) Before Provision for Income Taxes	(467,465 )	85,029
Provision for income taxes		3,000
Net Income (Loss)	\$ (467,465 )	\$ 82,029
Weighted average number of common shares outstanding basic and fully diluted	19,000,000	19,000,000
Net income (loss) per share basic and fully diluted	\$ (0.02 )	\$ 0.00

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

**IT&E INTERNATIONAL GROUP**  
**Statements of Stockholders Equity**

	Common Stock		Preferred Stock		Additional Paid-in Capital	Retained Earnings	Total Stockholders Equity
	Shares	Amount	Shares	Amount			
Balance, Dec 31, 2002, Restated	19,000,000	\$ 19,000	2,000,000	\$ 2,000	\$ 353,680	\$ 424,109	\$ 798,789
Net income						82,029	82,029
Balance, Dec 31, 2003, Restated	19,000,000	19,000	2,000,000	2,000	353,680	506,138	880,818
Issuance of Warrants					509,860		509,860
Net loss, Restated						(467,465 )	(467,465 )
Balance, Dec. 31, 2004, Restated	19,000,000	\$ 19,000	2,000,000	\$ 2,000	\$ 863,540	\$ 38,673	\$ 923,213

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

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**IT&E INTERNATIONAL GROUP**  
**Statements of Cash Flow**

	Years ended December 31,	
	2004 (restated)	2003
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ (467,465 )	\$ 82,029
<b>Adjustments to reconcile net income (loss) to net cash used by operating activities:</b>		
Depreciation expense	21,588	18,438
Amortization of loan fees	60,235	
Loss on disposal of fixed assets		8,298
Deferred rent	30,293	
<b>Changes in assets and liabilities</b>		
Accounts receivable	(1,004,594 )	(854,727 )
Unbilled revenue	62,209	(112,130 )
Prepaid and other current assets	(5,210 )	7,170
Accounts payable	341,334	48,423
Accrued payroll and employee benefits	154,004	51,180
Other accrued liabilities	(6,673 )	3,000
Net cash used by operating activities	(814,279 )	(748,319 )
<b>Cash Flow from investing activities</b>		
Purchase of fixed assets, including internal-use software	(252,405 )	(57,355 )
Deposits	(10,342 )	2,853
Loan Fees	(357,519 )	
Net cash used by investing activities	(620,267 )	(54,502 )
<b>Cash Flow from financing activities</b>		
Proceeds from line of credit	758,000	816,021
Payments on line of credit	(1,613,015 )	
Proceeds from capital lease obligation	20,039	
Payments on capital lease obligations	(935 )	
Proceeds from convertible note payable	2,500,000	
Net cash provided by financing activities	1,664,089	816,021
Net increase in cash and cash equivalents	229,543	13,200
Cash and cash equivalents, beginning of year	173,236	160,036
Cash and cash equivalents, end of year	\$ 402,779	\$ 173,236
<b>Supplemental disclosures:</b>		
Interest paid	\$ 82,109	\$
Income taxes paid	\$	\$

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

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**IT&E INTERNATIONAL GROUP  
NOTES TO RESTATED CONSOLIDATED FINANCIAL STATEMENTS**

**1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**NATURE OF BUSINESS**

In this discussion, the terms Company, we, us, and our, refer to IT&E International Group and subsidiaries, except where it is made clear otherwise.

We are a life sciences service organization focused on providing our clients with project-based consulting services in the areas of FDA regulatory compliance, data management, biometrics and clinical validation throughout the clinical trials lifecycle. Our services range from recruitment of patients for clinical trials and providing skilled personnel to assist with managing clinical trials, to providing enterprise software solutions and training to manage data to ensure FDA compliance. We also provide validation services for new pharmaceutical manufacturing facilities. We serve a variety of clients, including those in the private industry, public institutions, research facilities and the government.

We were incorporated in the State of Nevada in 2002 as Clinical Trials Assistance Corporation. In April 2004, we merged with IT&E International, Inc. and changed our name to IT&E International Group.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**CORRECTION OF AN ERROR**

We have previously issued our consolidated financial statements for the year ended December 31, 2004 and are now correcting our financial statements for the year ended December 31, 2004 to reflect that we have determined that the item Cash-restricted in the amount of \$2,506,862 reflected on the balance sheet as a current asset does not fall within the definition of an asset under generally accepted accounting principles (GAAP) since the restricted cash was under the sole dominion and control of Laurus Master Fund, Ltd. In addition, the item Long-term convertible note payable, less current portion reflected on the balance sheet has been correspondingly reduced by \$2,500,000 because the Company has also determined that the portion of the proceeds from the issuance of such convertible promissory note that was placed in the restricted account does not fall within the definition of liability under GAAP. This correction also impacts the Statements of Operations, the Statements of Stockholders Equity, and the Statements of Cash Flow for the year ended December 31, 2004, as interest income of \$6,862 had been previously recorded, along with accrued interest payable of \$38,455 on the restricted proceeds. The net impact is a reduction of the net loss of \$31,593. Several reclassifications were also made to prior interest expense transactions, and Footnote 6 to the financial statements included herein has been amended to reflect the foregoing. In addition a reclassification of \$820 was made between preferred stock and additional paid-in capital to correct for fully paid Series A preferred stock issued in excess of the number of Series A preferred stock authorized. These shares require shareholder authorization before they can be issued.

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The effects on our previously issued 2004 financial statements are summarized as follows:

	Previously Reported	Increase (Decrease)	Restated
Cash-Restricted	\$ 2,506,862	\$ (2,506,862 )	\$
Total Current Assets	5,764,715	(2,506,862 )	3,257,853
Total Assets	6,919,018	(2,506,862 )	4,412,156
Current Liabilities	1,678,050	(38,455 )	1,639,595
Long-term convertible note payable, less current portion	4,333,333	(2,500,000 )	1,833,333
Total Liabilities	6,027,398	(2,538,453 )	3,488,945
<b>Stockholders' Equity:</b>			
Preferred Stock	2,820	(820 )	2,000
Additional Paid-in Capital	862,720	820	863,540
Net Loss for 2004	(499,058 )	31,593	(467,465 )
Total Liabilities and Stockholders' Deficit	6,919,018	(2,506,862 )	4,412,156

### Statement of Operations for the Year Ended December 31, 2004

	Previously Reported	Increase (Decrease)	Restated
Interest Income	\$ 3,298	\$ (3,298 )	\$
Interest Expense	(137,022 )	34,891	(102,131 )
Net Loss	(499,058 )	31,593	(467,465 )
Net Loss Per Share - Basic and Diluted	(0.03 )	0.01	(0.02 )

### Statement of Stockholders' Equity as of December 31, 2004

	Preferred Stock Number of Shares	Amount	Additional Paid-in Capital	Retained Earnings	Total Stockholders Equity (Deficit)
Balance at January 1, 2004, as previously reported	2,820,000	\$ 2,820	\$ 352,860	\$ 506,138	\$ 880,818
Shares issued, but not yet authorized	(820,000 )	(820 )	820		
Net loss for 2004, as restated				(467,465 )	(467,465 )
Balance at December 31, 2004, as restated	2,000,000	\$ 2,000	\$ 863,540	\$ 38,673	\$ 923,213

### USE OF ESTIMATES

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

We maintain an allowance for doubtful accounts for estimated losses resulting from an inability of clients to make required payments. This allowance is based on account receivables, historical collection experience, current economic trends, and changes in the customer payment terms.

## **CASH AND CASH EQUIVALENTS, INCLUDING RESTRICTED CASH**

We consider all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. Our restricted cash equivalents consist primarily of a short-term money market deposit. Our cash accounts are with certain financial institutions. The balances in these accounts exceed the maximum U.S. federally insured amount. We have not experienced any losses in such accounts and we believe that we are not exposed to any significant credit risk on our cash and cash equivalents.

## **REVENUE RECOGNITION, ACCOUNTS RECEIVABLE, AND UNBILLED RECEIVABLES**

Revenues are derived primarily from FDA validation and compliance outsourcing services, consulting, and systems integration. Revenues are recognized on a time-and-materials, level-of-effort, percentage-of-completion, or straight-line basis. Before revenues are recognized, the following four criteria must be met: (a) persuasive evidence of an arrangement exists; (b) delivery has occurred or services rendered; (c) the fee is fixed and determinable; and (d) collectibility is reasonably assured. We determine if the fee is fixed and determinable and collectibility is reasonably assured based on our judgment regarding the nature of the fee charged for services rendered and products delivered and the collectibility of those fees. Arrangements range in length from less than one year to several years.

Revenues from time-and-materials arrangements are generally recognized based upon contracted hourly billing rates as the work progresses. Revenues from level-of-effort arrangements are recognized based upon a fixed price for the level of resources provided. Revenues from fixed fee arrangements for consulting are generally recognized on a rate per hour or percentage-of-completion basis. For each of our fixed fee contracts we maintain estimates of total revenue and cost over the contract term. For purposes of periodic financial reporting on the fixed price consulting contracts, we accumulate total actual costs incurred to date under the contract. The ratio of those actual costs to its then-current estimate of total costs for the life of the contract is then applied to its then-current estimate of total revenues for the life of the contract to determine the portion of total estimated revenues that should be recognized. We follow this method because reasonably dependable estimates of the revenues and costs applicable to various stages of a contract can be made. In addition, total actual costs incurred would approximate measuring revenue based on labor hours since total actual costs are derived from the labor hours incurred. No material difference would occur if such costs were measured by total actual costs as compared to labor hours incurred.

Revenues recognized on fixed price consulting contracts are subject to revisions as the contract progresses to completion. If we do not accurately estimate the resources required or the scope of the work to be performed, do not complete our projects within the planned periods of time, or do not satisfy our obligations under the contracts, then profit may be significantly and negatively affected or losses may need to be recognized. Revisions in our contract estimates are reflected in the period in which the determination is made that facts and circumstances dictate a change of estimate. Favorable changes in estimates result in additional revenues recognized, and unfavorable changes in estimates result in a reduction of recognized revenues. Provisions for estimated losses on individual contracts are made in the period in which the loss first becomes known.

Over 95% of our contracts are performed on a time and materials basis, with the remaining 5% being fixed fee contracts.

At the beginning of 2003, we adopted EITF 00-21, Accounting for Revenue Arrangements with Multiple Deliverables, which addresses how to account for arrangements that involve the delivery or performance of multiple products, services, and/or rights to use assets. Revenue arrangements with multiple deliverables are divided into separate units of accounting if the deliverables in the arrangement meet the following criteria: (1) the delivered item has value to the customer on a stand-alone basis; (2) there is objective and reliable evidence of the fair value of undelivered items; and (3) delivery of any undelivered item is probable. Arrangement consideration is allocated among the separate units of

accounting based on their relative fair values, with the amount allocated to the delivered item being limited to the amount that is not contingent on the delivery of additional items or meeting other specified performance conditions. Our contracts are primarily time and material contracts devoted to a specific deliverable rather than to multiple deliverables.

On certain contracts, or elements of contracts, costs are incurred subsequent to the signing of the contract, but prior to the rendering of service and associated recognition of revenue. Where such costs are incurred and realization of those costs is either paid for upfront or guaranteed by the contract, those costs are deferred and later expensed over the period of recognition of the related revenue. At December 31, 2004 and 2003, the Company had no deferred costs.

Unbilled receivables represent revenues recognized for services performed that were not billed at the balance sheet date. The majority of these amounts are billed in the subsequent month. As of December 31, 2004 and 2003, the Company had unbilled revenues included in current receivables of \$133,398 and \$195,607, respectively.

#### **REIMBURSABLE OUT-OF-POCKET EXPENSES**

In addition to the standard costs incurred to provide services to our customers, we pay other incidental expenses, in excess of contract amounts, which are generally reimbursable under the terms of the contract. These expenses are recorded as both revenues and direct cost of services in accordance with the provisions of EITF 01-14, Income Statement Characterization of Reimbursements Received for Out-of-Pocket Expenses Incurred.

#### **CREDIT RISKS**

Financial instruments that subject us to concentrations of credit risks consist primarily of cash and cash equivalents and billed and unbilled accounts receivable. Our clients are primarily involved in the healthcare and pharmaceutical industries. The significant majority of our accounts receivable exposure is to large, well established firms. Concentrations of credit risk with respect to billed and unbilled accounts receivable are mitigated, to some degree, based upon the nature of our clients. Management considers the likelihood of material credit risk exposure as remote.

The healthcare and life sciences industries may be affected by economic factors, which may impact accounts receivable. At December 31, 2004, approximately 75% of the outstanding trade receivables are due from nine customers who also accounted for approximately 65% of total sales. Management does not believe that any single customer or geographic area represents significant credit risk.

#### **FAIR VALUE OF FINANCIAL INSTRUMENTS**

The carrying value of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and certain other liabilities approximate their estimated fair values due to the short-term nature of these instruments. Investments available for sale are carried at fair value.

#### **PROPERTY AND EQUIPMENT**

Property and equipment are stated at cost. Depreciation and amortization are provided on a straight-line basis in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives, which range from three to seven years. Leasehold improvements are amortized over the lives of the respective leases or the service lives of the improvements, whichever are shorter.

We account for costs incurred to develop computer software for internal use in accordance with Statement of Position (SOP) 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use. As required by SOP 98-1, we capitalize the costs incurred during the application development stage, which include costs to design the software configuration and interfaces, coding, installation, and testing. Costs incurred during the preliminary project along with post-implementation

stages of internal use computer software are expensed as incurred. Capitalized development costs are amortized over various periods up to three years. Costs incurred to maintain existing product offerings are expensed as incurred. The capitalization and ongoing assessment of recoverability of development costs requires considerable judgment by management with respect to certain external factors, including, but not limited to, technological and economic feasibility, and estimated economic life. For the years ended December 31, 2004 and December 31, 2003, we capitalized product development costs of \$210,444 and \$16,000, respectively, and will begin to amortize such costs in 2005 over the estimated useful life of three years.

Upon sale or retirement of property and equipment, the costs and related accumulated depreciation are eliminated from the accounts, and any gain or loss on such disposition is reflected in the consolidated statements of operations.

Expenditures for repairs and maintenance are charged to operations as incurred.

## **INCOME TAXES**

Income taxes are computed using the asset and liability approach, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in our financial statements or tax returns. In estimating future tax consequences, we generally consider all expected future events other than the enactment of changes in tax law or rates. If it is more likely than not that some portion or all of a deferred tax asset will not be realized, a valuation allowance is recorded.

## **NET INCOME (LOSS) PER SHARE**

Net income (loss) per basic share is computed using the weighted average number of common shares outstanding. Net income (loss) per diluted share is computed using the weighted average common shares and potential common shares outstanding. Dilution is computed by applying the treasury stock method. Under this method, options and warrants are assumed to be exercised at the beginning of the period (or at the time of issuance, if later), and as if funds obtained thereby were used to purchase common stock at the average market price during the period. Warrants to purchase 3,924,000 shares of common stock were outstanding during 2004, but were not included in the computation of earnings per diluted shares because the effect would be antidilutive. There were no stock options issued and outstanding as of December 31, 2004 and 2003.

## **RECENT ACCOUNTING PRONOUNCEMENTS**

In December 2004, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard No. 123 (revised 2004) Share-Based Payment (SFAS 123R), which is a revision of FASB Statement No. 123, Accounting for Stock-Based Compensation. Statement 123(R) supersedes APB Opinion No. 25, Accounting for Stock Issued to Employees, and amends FASB Statement No. 95, Statement of Cash Flows. Generally, the approach in Statement 123R is similar to the approach described in Statement 123. However, Statement 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

Statement 123R must be adopted no later than July 1, 2005. Early adoption will be permitted in periods in which financial statements have not yet been issued. We expect to adopt Statement 123R on July 1, 2005. Statement 123R permits public companies to adopt its requirements using one of two methods:

1. A modified prospective method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of Statement 123R for all share-based payments granted after the effective date and (b) based on the requirements of Statement 123 for all awards

granted to employees prior to the effective date of Statement 123R that remain unvested on the effective date.

2. A modified retrospective method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under Statement 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

We are currently evaluating the two different methods for the adoption of Statement 123 and have not determined which of the two methods we will adopt.

To date, we have not issued stock-based payments to our employees, though we anticipate the issuance of stock options during 2005. As such, we have not recognized any stock-based compensation during 2004 and 2003.

We believe that the adoption of Statement 123R's fair value method will have a material impact on our result of operations, although it will have no impact on our overall financial position. The impact of adoption of Statement 123R cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. Statement 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. We cannot estimate what those amounts will be as it will depend on the levels of share-based payments granted in the future.

In May 2003, the FASB issued SFAS No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity. SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). Many of these instruments were previously classified as equity. The guidance in SFAS No. 150 is generally effective for all financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. We do not believe that the adoption of SFAS No. 150 will have a material impact on our financial statements.

In December 2003, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin No. 104 (SAB 104), Revenue Recognition, which supersedes SAB 101, Revenue Recognition in Financial Statements. SAB 104's primary purpose is to rescind the accounting guidance contained in SAB 101 related to multiple-element revenue arrangements that was superseded as a result of the issuance of EITF 00-21,

Accounting for Revenue Arrangements with Multiple Deliverables and to rescind the SEC's related Revenue Recognition in Financial Statements Frequently Asked Questions and Answers issued with SAB 101 that had been codified in SEC Topic 13, Revenue Recognition. While the wording of SAB 104 has changed to reflect the issuance of EITF 00-21, the revenue recognition principles of SAB 101 remain largely unchanged by the issuance of SAB 104, which was effective upon issuance. The adoption of SAB 104 did not have a material effect on our financial position or results of operations.

## **RECLASSIFICATION**

Certain amounts in the 2003 financial statements have been reclassified to conform to the presentation of the 2004 financial statements.

## **3. MERGER WITH CLINICAL TRIALS ASSISTANCE CORPORATION**

On April 14, 2004, the Company, Clinical Trials Assistance Corporation, a Nevada corporation (CTAL), and Clinical Trials Assistance Acquisition Corporation, a Nevada corporation (Merger Sub), entered into an Acquisition Agreement and Plan of Merger (collectively the Agreement) pursuant to

which CTAL, through its wholly-owned subsidiary, Merger Sub, acquired IT&E in exchange for 11,000,000 shares of CTAL common stock which were issued to the holders of IT&E stock (the Merger ). Immediately after the Acquisition was consummated, and further to the Agreement, CTAL's controlling stockholder cancelled 28,000,000 shares of CTAL's Common Stock held by him (the Cancellation ). The transaction contemplated by the Agreement was intended to be a tax-free reorganization pursuant to the provisions of Section 351 and 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended.

The stockholders of IT&E (three stockholders owning 481,500 shares), who unanimously approved the acquisition as of the closing date of the Merger and after giving effect to the Cancellation, now own approximately 80% of the CTAL's outstanding common stock. This figure is based on the issuance of 9,000,000 shares of \$0.001 par value common stock and the share dilution upon conversion of the 2,000,000 warrants into common stock.

This transaction was accounted for as a reverse merger, since the stockholders of IT&E own a majority of the issued and outstanding shares of common stock of CTAL, and the directors and executive officers of IT&E became the directors and executive officers of the CTAL. No goodwill or other intangible was recorded as a part of this transaction and the cost of the transaction was expensed as incurred. In accordance with reverse merger accounting guidelines, all share issuances and per share calculations reflect the issuance of the merger shares on a retroactive basis as if the shares were issued from the date of inception of IT&E before the merger with CTAL.

As a part of this transaction, 2,000,000 warrants were issued to several individuals for cash totaling \$2,000. The warrants are convertible on a one-for-one basis at a price to be agreed upon on the exercise date by the Company's board of directors and the warrant holders. The exercise date is not sooner than one year and not later than five years.

#### 4. ADVANCES TO EMPLOYEES

At December 31, 2004 and 2003, the Company had advanced \$21,525 and \$46,971, respectively, to certain employees. The notes are non-interest bearing and due during 2005. During 2005, an employee advance of \$20,000 was deemed uncollectible.

#### 5. PROPERTY AND EQUIPMENT

Property and equipment at December 31, 2004 and 2003 consisted of the following:

	2004	2003
Computers	\$ 135,971	\$ 113,940
Furniture and Fixtures	41,007	21,082
Internal-Use Software	210,444	16,000
Leasehold Improvements	17,898	1,731
	405,320	152,753
Less Accumulated Depreciation	(91,885 )	(70,135 )
Net Fixed Assets	\$ 313,435	\$ 82,618

Depreciation expense totaled \$21,588 and \$18,438 during the years ended December 31, 2004 and 2003, respectively.

## 6. CONVERTIBLE DEBT

On October 18, 2004, we issued a \$5,000,000 secured convertible term note ( Note ) to Laurus Master Fund, Ltd. ( Laurus ). The Note is convertible into shares of our common stock at an initial conversion price of \$0.75 per share. Pursuant to this agreement, we also issued to Laurus a warrant ( Warrant ) to purchase up to 1,924,000 shares of our common stock, of which 962,000 shares will have an exercise price of \$0.94 and 962,000 shares will have an exercise price of \$1.12. The warrants expire on October 18, 2011.

The Note has a term of three years and accrues interest at the prime rate plus 2.5% per year (7.50% as of December 31, 2004). The Note is secured by all our assets and the assets of our subsidiaries. The Note consists of a non-restricted facility of \$2.5 million and a restricted facility of \$2.5 million. The non-restricted facility was used to pay off an outstanding line of credit of approximately \$1.5 million, with the remaining \$1.0 million, net of transaction fees, being used for working capital. The second \$2.5 million facility is restricted for either additional internal growth working capital requirements or for a future acquisition, which is a part of our strategic long-term growth plans. The cash related to the restricted account has not been recorded as an asset on our balance sheet, nor has the amount of the secured convertible note that corresponds to the amount in the restricted account been recorded as a liability on our balance sheet since such funds are under the sole dominion and control of Laurus as security for our obligations under the Laurus Securities Purchase Agreement and other related agreements. Such restricted cash does not fall within the definition of an asset under generally accepted accounting principles ( GAAP ) nor does the amount of the secured note that corresponds to the amount of cash in the restricted account fall within the definition of liability under GAAP.

Interest on the unrestricted principal amount is payable monthly, in arrears, on the first business day of each calendar month until the maturity date. Under the terms of the Note, the monthly interest payment and the monthly principal payment are payable either in cash at 103% of the respective monthly amortization amounts or, if certain criteria are met, in shares of our common stock. The minimum monthly principal repayment of \$83,333.33 commences on May 1, 2005, and continues through the October 18, 2007 maturity date. The principal criteria for the monthly payments to be made in shares of our common stock include:

- the effectiveness of a current registration statement covering the shares of our common stock into which the principal and interest under the Note are convertible;
- an average closing price of our common stock for the previous five trading days greater than or equal to 110% of the fixed conversion price; and
- the amount of such conversion not exceeding 25% of the aggregate dollar trading volume of our common stock for the previous 22 trading days.

We may prepay the non-restricted facility of the Note at any time by paying 125% of the principal amount then outstanding, together with accrued but unpaid interest thereon. We may also prepay the restricted facility of the Note at any time by paying 115% of the principal amount then outstanding, together with accrued but unpaid interest thereon. Upon an event of default under the Note, Laurus may demand repayment of the outstanding principal balance at a rate of 125% of the non-restricted facility of the Note and 115% of the outstanding principal balance of the restricted facility, plus any accrued interest. If the Note remains outstanding after an event of default that is not cured, the interest rate increases to 1.5% per month.

On a month-by-month basis, if we register the shares of common stock issuable upon conversion of the Note and upon exercise of the Warrant on a registration statement declared effective by the Securities and Exchange Commission, and the market price of our common stock for five consecutive trading days exceeds the conversion price by at least 25%, then the interest rate on the Note for the succeeding

calendar month shall be reduced by 1% for every 25% increase in the market price of our common stock above the conversion price of the Note, but in no event shall the interest rate be less than zero percent.

Laurus also has the option to convert all or a portion of the Note into shares of our common stock at any time, subject to limitations described below, at a conversion price of \$0.75 per share, subject to adjustment as described below. The Note is currently convertible into 3,333,333 shares of our common stock, excluding the conversion of any accrued interest. Laurus is limited on its ability to convert is the conversion of the Note or the exercise of the Warrant would cause the shares then held be Laurus to exceed 4.99% of our outstanding shares of common stock unless there has been an event of default or Laurus provides us with 75 days prior notice.

We were obligated to file a registration statement with the Securities and Exchange Commission ( SEC ) registering the resale of shares of our common stock issuable upon conversion of the Note and exercise of the Warrant by November 17, 2004, and to have such Statement declared effective by the SEC by no later than January 25, 2005. We timely filed the registration statement, but it has not yet been declared effective. If the registration statement is not declared effective within the timeframe described, if the registration statement is suspended other than as permitted in the Registration Rights Agreement, or if our common stock is not listed for three consecutive trading days, we are obligated to pay Laurus additional cash fees. The cash fees are 2.0% of the original principal amount of the Note for each 30 day period in which we fail to correct these issues. Since the registration statement has not yet been declared effective, we are incurring monthly cash fees to Laurus.

The fair value of the warrants has been estimated on the date of grant using the Black-Scholes option pricing model. The weighted average fair value of these warrants are \$0.28 and \$0.25. The following assumptions were used in computing the fair value of these warrants: weighted average risk-free interest rate of 6.0%, zero dividend yield, volatility of the Company s common stock of 86.81% and an expected life of the warrants of two years. Approximately \$510,000 was added to financing costs as a result of the warrants. No warrants have been exercised through December 31, 2004. In addition to the costs related to the warrants, we also incurred approximately, \$358,000 of loan origination costs for the debt. We will amortize the total loan costs over the period of the loan. We amortized approximately \$60,000 for the period ending December 31, 2004.

Future maturities of long-term debt are as follows as of December 31, 2004:

2005	\$ 666,667
2006	1,000,000
2007	833,333
2008	
2009	
Thereafter	\$ 2,500,000

## 7. COMMITMENTS AND CONTINGENCIES

During 2004, we entered into a new capital lease obligation totaling \$20,039. This leased equipment has accumulated depreciation of \$1,391 at December 31, 2004.

Future minimum lease payments on the capital lease obligation at December 31, 2004 are as follows:

<b>For the year ending December 31:</b>	
2005	\$ 5,654
2006	5,654
2007	5,654
2008	5,654
2009	3,769
Total	26,385
Less amount representing interest	(7,281 )
Present value of capital lease payments	\$ 19,104

The Company also leases its office facilities, certain office space, and living accommodations for consultants on short-term projects under operating leases that expire over the next three years. At December 31, 2004, the Company was obligated under non-cancelable operating leases with future minimum rentals as follows:

<b>For the year ending December 31,</b>	
2005	\$ 133,241
2006	97,402
2007	79,971
Total	\$ 310,614

Rent expense was \$226,036 and \$206,154 for the years ended December 31, 2003 and 2002, respectively.

We are involved in various legal actions arising in the normal course of business. We believe that the outcome of these matters will not have a material adverse effect on our financial position or results of operation.

## **8. PROFIT SHARING PLANS**

We provide a 401(k) salary deferral plan for eligible employees. Employees may elect to reduce their compensation by an amount that will not exceed the total amount allowed by the Internal Revenue Code for all contributions to qualified plans. The plan does provide for discretionary contributions by the employer. No contributions were made by the Company to the plan for the years ended December 31, 2004 and 2003.

**IT&E INTERNATIONAL GROUP**  
**Balance Sheets**

	<b>September 30, 2005 (unaudited)</b>	<b>December 31, 2004 (restated)</b>
<b>Assets</b>		
Current assets:		
Cash	\$ 2,177,026	\$ 402,779
Accounts receivable, net of allowance for doubtful accounts of \$75,000 at September 30, 2005 and December 31, 2004	2,418,511	2,644,501
Unbilled revenue	79,312	133,398
Prepaid and other current assets	228,614	77,175
Total current assets	4,903,463	3,257,853
Fixed assets, net	265,956	313,435
Loan fees, net	590,299	807,144
Deposits	11,679	33,724
	\$ 5,771,397	\$ 4,412,156
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 394,662	\$ 596,189
Accrued payroll and employee benefits	489,029	322,300
Current portion of capital lease obligations	3,441	3,089
Current portion of convertible note payable	2,123,077	666,667
Accrued interest on note payable	41,285	16,457
Deferred rent	24,927	30,293
Other accrued liabilities	114,897	4,600
Total current liabilities	3,191,318	1,639,595
Long-term capital lease obligations, less current portion	13,388	16,015
Long-term convertible note payable, less current portion	2,300,000	1,833,333
	5,504,706	3,488,943
Stockholders' equity:		
Common stock, \$.001 par value, 250,000,000 shares authorized, 21,344,198 and 19,000,000 shares issued and outstanding, respectively	21,344	19,000
Preferred stock, \$.001 par value, 2,820,000 shares authorized, 2,820,000 and 2,000,000 shares issued and outstanding, respectively	2,820	2,000
Additional paid-in capital	1,124,676	863,540
Retained earnings (deficit)	(882,149 )	38,673
	266,691	923,213
	\$ 5,771,397	\$ 4,412,156

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

**IT&E INTERNATIONAL GROUP**  
**Statements of Operations**  
(Unaudited)

	For the three months ended		For the nine months ended	
	September 30, 2005	2004	September 30, 2005	2004
Service revenue	\$ 4,292,422	\$ 3,038,582	\$ 13,036,358	\$ 9,404,394
Reimbursement revenue	146,878	116,552	379,833	320,737
Total revenue	4,439,300	3,155,134	13,416,191	9,725,131
Cost of revenue	2,886,019	2,410,783	8,907,476	6,693,321
Reimbursable out-of-pocket expenses	146,878	116,552	379,833	320,737
Total cost of sales	3,032,897	2,527,335	9,287,309	7,014,058
Gross profit	1,406,403	627,799	4,128,882	2,711,073
Operating Expenses:				
General and administrative expenses	842,160	710,250	2,405,345	1,918,475
Sales and marketing expenses	296,392	252,693	988,273	698,924
Depreciation expense	23,742	4,677	66,491	14,314
Officer compensation	329,739	108,750	778,582	326,250
Total operating expenses	1,492,033	1,076,370	4,238,691	2,957,963
Net operating loss	(85,630 )	(448,571 )	(109,809 )	(246,890 )
Other income (expense):				
Interest income	56,013		58,331	
Interest expense	(230,172 )	(18,568 )	(375,960 )	(49,032 )
Loan fee amortization	(72,282 )		(216,845 )	
Fees on long-term debt			(214,039 )	
Non-cash financing costs			(62,500 )	
Bad debt expense		32,359		32,359
Total other income (expense)	(246,441 )	13,791	(811,013 )	(16,673 )
Net loss	\$ (332,071 )	\$ (434,780 )	\$ (920,822 )	\$ (263,563 )
Weighted average number of common shares outstanding basic and fully diluted	21,344,198	19,000,000	20,412,124	19,000,000
Net loss per share basic and fully diluted	\$ (0.02 )	\$ (0.02 )	\$ (0.05 )	\$ (0.01 )

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

**IT&E INTERNATIONAL GROUP**  
**Statements of Cash Flow**  
**(Unaudited)**

	For the nine months ended September 30,	
	2005	2004
Cash flows from operating activities:		
Net loss	\$ (920,822 )	\$ (263,563 )
Adjustments to reconcile net income (loss) to net cash provided from (used by) operating activities:		
Depreciation expense	66,491	14,314
Bad debt expense		32,359
Amortization of loan fees	216,845	
Deferred rent	(5,366 )	
Stock issued for financing costs	62,500	
Stock issued for compensation	200,000	
Changes in assets and liabilities:		
Accounts receivable	225,990	(633,240 )
Unbilled revenue	54,086	
Prepaid and other current assets	(151,439 )	(31,895 )
Accounts payable	(201,527 )	306,175
Accrued payroll and employee benefits	166,729	252,565
Accrued interest on note payable	24,828	
Other current liabilities	110,297	18,987
Net cash used by operating activities	(151,388 )	(304,298 )
Cash flows from investing activities:		
Purchase of fixed assets, including internal-use software	(19,012 )	(201,306 )
Deposits	22,045	(18,196 )
Net cash provided from (used by) investing activities	3,033	(219,502 )
Cash flows from financing activities:		
Proceeds from line of credit		688,000
Payments on line of credit		(48,865 )
Proceeds from capital lease obligation		20,039
Payments on capital lease obligation	(2,275 )	
Proceeds from convertible note payable	2,500,000	
Payments on convertible note payable	(576,923 )	
Proceeds from exercise of warrants	1,800	
Distributions to shareholders		(16,850 )
Net cash provided from financing activities	1,922,602	642,324
Net increase in cash and cash equivalents	1,774,247	118,524
Cash and cash equivalents, beginning of period	402,779	173,236
Cash and cash equivalents, end of period	\$ 2,177,026	\$ 291,760
Supplemental disclosures:		
Interest paid	\$ 334,675	\$ 49,032
Income taxes paid	\$ 55,184	\$ 2,212

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

**IT&E INTERNATIONAL GROUP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. NATURE OF BUSINESS**

In this discussion, the terms Company , we , us , and our , refer to IT&E International Group and subsidiaries, except where it is made clear otherwise.

We are a life sciences service organization focused on providing our clients with project-based consulting services in the areas of FDA regulatory compliance, data management, biometrics and clinical validation throughout the clinical trials lifecycle. Our services range from recruitment of patients for clinical trials and providing skilled personnel to assist with managing clinical trials, to providing enterprise software solutions and training to manage data to ensure FDA compliance. We also provide validation services for new pharmaceutical manufacturing facilities. We serve a variety of clients, including those in the private industry, public institutions, research facilities and the government.

We were incorporated in the State of Nevada in 2002 as Clinical Trials Assistance Corporation. In April 2004, we merged with IT&E International, Inc. and changed our name to IT&E International Group.

**2. BASIS OF PRESENTATION**

The consolidated interim financial statements included herein, presented in accordance with United States generally accepted accounting principles and stated in US dollars, have been prepared by us, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations, although we believe that the disclosures are adequate to make the information presented not misleading.

These statements reflect all adjustments, consisting of normal recurring adjustments, which, in the opinion of management, are necessary for fair presentation of the information contained therein. It is suggested that these consolidated interim financial statements be read in conjunction with our consolidated financial statements for the year ended December 31, 2004 and the notes thereto. We have followed the same accounting policies in the preparation of these consolidated interim reports.

Results of operations for the interim periods are not indicative of annual results. Certain amounts in the 2004 financial statements have been reclassified to conform to the presentation of the 2005 financial statements.

During October 2005, we restated our financial statements that had previously been filed with our Form 10-KSB/A for the year ended December 31, 2004, and our Form 10-QSB s filed for the quarters ended March 31, 2005 and June 30, 2005. The restatement was the result of our determination that previously noted Cash-restricted on our balance sheets for those periods did not fall within the definition of an asset under generally accepted accounting principles ( GAAP ) since the restricted cash was under the sole dominion and control of Laurus Master Fund, Ltd., the party to a \$5,000,000 convertible note. In addition, previously noted Long-term convertible note payable, less current portion was also restated because we determined that the portion of the proceeds from the issuance of such convertible promissory note that was placed in the restricted account did not fall within the definition of liability under GAAP. See footnote 4 for further details concerning this convertible debt.

### **3. FIXED ASSETS**

During the nine months ended September 30, 2005 we had \$19,012 of fixed asset additions.

Depreciation expense totaled \$23,742 and \$4,677 for the three months ended September 30, 2005 and 2004, respectively, and \$66,491 and \$14,314 for the nine months ended September 30, 2005 and 2004, respectively.

### **4. CONVERTIBLE DEBT**

We have outstanding a \$5,000,000 secured convertible term note to Laurus Master Fund, Ltd ( Laurus ). During October 2004, we issued \$2,500,000 of this note. During the first quarter of 2005, as a result of not meeting the requirement of causing the registration statement covering the shares of our common stock into which the principal and interest under the Note are convertible to become effective, we incurred fees of approximately \$214,000. During April 2005, Laurus issued an additional \$500,000 to pay these fees, along with the accrued interest owed on the \$500,000 which was not due until issued. During August 2005, Laurus released the remaining \$2 million, plus the interest that had been earned on these funds since October 2004. Of this amount, approximately \$128,000 was used to pay interest that had been accruing under the note owed to Laurus. The remaining \$1.9 million is intended to be used for potential merger and acquisition activity, as well as other general operating purposes. The minimum monthly principal repayment of \$100,000 began on May 1, 2005 and continued through the August 1, 2005 payment. With the release of the remaining \$2 million, the minimum monthly principal repayment will increase to approximately \$177,000 and continue through the October 18, 2007 maturity date.

We recorded interest expense of approximately \$230,000 and \$376,000 for the three and nine months ended September 30, 2005 related to this convertible note, and approximately \$19,000 and \$49,000 for the three and nine months ended September 30, 2004 related to a bank line of credit that was paid off with the proceeds of the Laurus note.

### **5. STOCKHOLDER S EQUITY**

During March 2005, 83,330 shares of common stock were issued to SBI USA as payment for investment banking consulting services valued at \$62,500.

During April 2005, 500,000 shares of common stock were issued to our former Vice President of Sales for services rendered at a value of \$200,000, and in May 2005, 1,760,868 shares were issued as the result of the exercise of warrants previously granted to individuals associated with the April 2004 reverse merger.

Preferred stock outstanding at December 31, 2004 has been restated by \$820 to account for 820,000 shares that were previously noted as outstanding, but were in fact to be issued subject to shareholder approval. At our Annual Meeting of Shareholders held on September 26, 2005, the issuance of these shares were approved by our shareholders and were issued as of that date.

#### **Stock options**

On April 29, 2005, we adopted the 2005 Equity Incentive Plan (the Plan ) to provide a means by which we can retain and maximize the services of our current employees, directors and consultants. An aggregate of 7,500,000 shares of our common stock may be issued pursuant to awards from the Plan. The Plan was approved by our shareholders at our recent Annual Meeting of Shareholders. Of the options granted to date, 2,508,750 options were granted to our officers.

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The following is a summary of activity of outstanding stock options under the 2005 Equity Incentive Plan:

	Number of Shares	Weighted Average Exercise Price
Options granted	3,018,250	\$ 0.23
Options exercised		
Options cancelled	(37,500 )	\$ 0.25
Balance at September 30, 2005	2,980,750	\$ 0.23
Exercisable at September 30, 2005	298,927	\$ 0.25

The following is a summary of information about the 2005 Stock Option Plan options outstanding at September 30, 2005:

Shares Underlying Options Outstanding			Shares Underlying Options Exercisable		
Range of Exercise Prices	Outstanding Options	Average Remaining Contractual Life	Weighted Average Exercise Price	Options Exercisable	Exercise Price
\$0.17-\$0.25	2,980,750	2.7 years	\$ 0.23	298,927	\$ 0.25

We measure our stock-based compensation using the intrinsic value method of accounting in accordance with Accounting Principles Board No. 25, Accounting for Stock Issued to Employees. Because we establish the exercise price based on the fair market value of our common stock at the date of grant, the options have no intrinsic value upon grant, and therefore no expense is recorded. Equity instruments issued to non-employees for goods and services are accounted for at fair value.

As required by Financial Accounting Standards Board (FAS) No. 123, Accounting for Stock-Based Compensation, and FAS No. 148, Accounting for Stock-Based Compensation Transition and Disclosure, the pro forma effects of stock-based compensation on net loss and net loss per common share have been estimated at the date of grant using the Black-Scholes option pricing model. For purposes of pro forma disclosures, the estimated fair value of the options is assumed to be amortized to expense over the options vesting periods. The pro forma effects of recognizing compensation expense under the fair value method on net income and net earnings per common share were as follows:

	Three Months Ended September 30, 2005		Nine Months Ended September 30, 2005	
	2005	2004	2005	2004
Net loss attributable to common stockholders				
As reported	\$ (332,071 )	\$ (434,780 )	\$ (920,822 )	\$ (263,563 )
Fair value of stock-based employee compensation	(275,939 )		(480,868 )	
Pro forma	\$ (608,010 )	\$ (434,780 )	\$ (1,401,690 )	\$ (263,563 )
Net loss per share:				
As reported	\$ (0.02 )	\$ (0.02 )	\$ (0.05 )	\$ (0.01 )
Pro forma	\$ (0.03 )	\$ (0.02 )	\$ (0.07 )	\$ (0.01 )

The Black-Scholes option valuation model was developed for use in estimating the fair value of short-term traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including expected stock price volatility. Because our stock options have characteristics significantly different from those of traded options and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion the existing models do not necessarily provide a reliable single measure of the fair value of its employee stock options.

Beckstead and Watts, LLP  
Certified Public Accountants  
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Henderson, NV 89052  
702.257.1984 (tel)  
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**Report of Independent Registered Public Accounting Firm**

We have audited the accompanying balance sheets of Millennix Inc. (the Company), as of December 31, 2004 and 2003, and the related statements of operations, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Millennix Inc. as of December 31, 2004 and 2003, and the results of its operations and cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

/s/ Beckstead and Watts, LLP

Henderson, Nevada  
September 26, 2005

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**MILLENNIX INC.**  
**Balance Sheets**

	<b>December 31,</b>	
	<b>2004</b>	<b>2003</b>
<b>Assets</b>		
Current Assets:		
Cash and equivalents	\$ 327,140	\$ 468,424
Accounts receivable, net of allowance for doubtful accounts	640,581	760,590
<b>Total Current Assets</b>	<b>967,721</b>	<b>1,229,013</b>
Fixed Assets, net	50,661	73,906
	\$ 1,018,382	\$ 1,302,920
<b>Liabilities and Stockholders' Equity</b>		
Current Liabilities:		
Accounts payable	\$ 312,574	\$ 324,303
Accrued payroll and employee benefits	84,318	100,705
Accrued liabilities	267	142,536
Grant reserves	508,657	179,048
Deferred revenue	214,102	114,478
Notes payable - current portion	55,000	55,000
Notes payable - related party	781,812	381,812
<b>Total Current Liabilities</b>	<b>1,956,730</b>	<b>1,297,883</b>
Long-term note payable, less current portion	68,750	123,750
	2,025,480	1,421,633
Commitments and contingencies		
Stockholders' equity (deficit):		
Common stock, no par value, 10,000 shares authorized, 50 shares issued and outstanding	100	100
Retained earnings (deficit)	(1,007,198 )	(118,813 )
	(1,007,098 )	(118,713 )
	\$ 1,018,382	\$ 1,302,920

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

**MILLENNIX INC.**  
**Statements of Operations**

	Years ended December 31,	
	2004	2003
Service Revenue	\$ 2,598,543	\$ 4,394,594
Reimbursement revenue	413,580	1,406,193
Total Revenue	3,012,123	5,800,787
Cost of Revenue	2,893,033	4,645,748
Gross profit	119,090	1,155,039
Operating Expenses:		
Depreciation expense	27,118	53,938
General and administrative expenses	178,956	180,130
Professional fees	28,905	18,856
Rent	173,428	163,910
Salaries and wages	571,373	838,051
Sales and marketing expenses	27,244	19,386
Total Operating Expenses	1,007,024	1,274,270
Net Operating Income (Loss)	(887,934 )	(119,230 )
Other income (expense)		
Other income	5,000	
Interest expense	(5,451 )	
Total Other Income (Expense)	(451 )	
Net Income (Loss)	\$ (888,385 )	\$ (119,230 )
Weighted average number of common shares outstanding basic and fully diluted	50	50
Net income (loss) per share basic and fully diluted	\$ (17,767.70 )	\$ (2,384.60 )

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

**MILLENNIX INC.****Statement of Changes in Stockholders' Equity**

	Common Stock		Additional	Retained	Total
	Shares	Amount	Paid-in	Earnings	Stock-holders
			Capital		Equity (deficit)
Balance, December 31, 2002	50	\$ 100	\$	\$ 417	\$ 517
Net loss				(119,230 )	(119,230 )
Balance, December 31, 2003	50	100		(118,813 )	(118,713 )
Net loss				(888,385 )	(888,385 )
Balance, December 31, 2004	50	\$ 100	\$	\$ (1,007,198 )	\$ (1,007,098 )

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

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**MILLENNIX INC.**  
**Statements of Cash Flows**

	Years ended December 31,	
	2004	2003
Cash flows from operating activities		
Net loss	\$ (888,385 )	\$ (119,230 )
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation expense	27,118	53,938
Changes in assets and liabilities		
Accounts receivable	120,009	312,312
Deferred revenue	99,625	114,478
Accounts payable	(11,729 )	(316,061 )
Accrued payroll and employee benefits	(16,387 )	83,916
Accrued liabilities	(142,269 )	142,535
Grant reserves	329,608	179,048
Net cash provided (used) by operating activities	(482,411 )	450,935
Cash flows from investing activities		
Purchase of fixed assets, including internal-use software	(3,873 )	
Net cash used by investing activities	(3,873 )	
Cash flows from financing activities		
Proceeds from note payable related party	440,000	203,626
Payments on note payable related party	(40,000 )	(172,000 )
Proceeds from note payable		
Payments on note payable	(55,000 )	(55,000 )
Net cash provided (used) by financing activities	345,000	(23,374 )
Net increase (decrease) in cash and cash equivalents	(141,284 )	427,561
Cash and cash equivalents, beginning of year	468,424	40,863
Cash and cash equivalents, end of year	\$ 327,140	\$ 468,424
Supplemental disclosures:		
Interest paid	\$ 5,451	\$
Income taxes paid	\$	\$

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

**MILLENIX INC.**  
**NOTES TO FINANCIAL STATEMENTS**

**1. DESCRIPTION OF BUSINESS**

*Nature of Business*

We are a full service Clinical Research Organization (CRO) with a unique focus in specialty areas of oncology, HIV, complex infectious disease, vaccines, gene therapy, immunology, biologics, metabolic and chronic diseases. We provide unparalleled professional clinical research services to the pharmaceutical, biotechnology, and medical device industries.

We provide a full spectrum of services to support a wide variety of clinical studies. We are competitively advantaged through extensive staff experience, a record of significant accomplishment and our attention to the particular and specific needs of sponsors working in the target areas.

The MILLENNIX Information Management System (MIMS) is secure 24/7 web portal providing access to group communication tools for information exchange within a clinical program. The portal is customized for each client or study allowing document and file upload and download through tiered, authenticated user groups.

Our Transitional Research Group TM (TRG) bridges therapeutic development from pre-clinical to first-time-in-man. We provide services to continue development through FDA approval.

We were incorporated on September 4, 1997 under the laws of the state of New York. With the consent of shareholders, we elected to be treated as a sub chapter S corporation pursuant to section 1362 of the internal revenue code whereby the income of the S corporation is taxed to the shareholders of the corporation rather than to the corporation itself.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Use of Estimates*

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

We maintain an allowance for doubtful accounts for estimated losses resulting from an inability of clients to make required payments. This allowance is based on account receivables, historical collection experience, current economic trends, and changes in the customer payment terms.

*Cash and Cash Equivalents*

We consider all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. Our restricted cash equivalents consist primarily of a short-term money market deposit. Our cash accounts are with certain financial institutions. The balances in these accounts exceed the maximum U.S. federally insured amount. We have not experienced any losses in such accounts and we believe that we are not exposed to any significant credit risk on our cash and cash equivalents.

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*Revenue Recognition, Accounts Receivable*

Revenues are derived primarily from clinical research outsourcing. Revenues are recognized on a time-and-materials or straight-line basis. Before revenues are recognized, the following four criteria must be met: (a) persuasive evidence of an arrangement exists; (b) delivery has occurred or services rendered; (c) the fee is fixed and determinable; and (d) collectibility is reasonably assured. We determine if the fee is fixed and determinable and collectibility is reasonably assured based on our judgment regarding the nature of the fee charged for services rendered and products delivered and the collectibility of those fees. Arrangements range in length from less than one year to several years.

Revenues from time-and-materials arrangements are generally recognized based upon contracted hourly billing rates as the work progresses. Revenues from fixed fee arrangements for consulting are generally recognized on a rate per hour or percentage-of-completion basis. For each of our fixed fee contracts we maintain estimates of total revenue and cost over the contract term. For purposes of periodic financial reporting on the fixed price consulting contracts, we accumulate total actual costs incurred to date under the contract. Amounts billed in advance of the period in which service is rendered are recorded as a liability under deferred revenue. We recorded deferred revenue as of December 31, 2004 and 2003, in the amount of \$214,102 and \$114,478, respectively.

Revenues recognized on fixed price service contracts are subject to revisions as the contract progresses to completion. If we do not accurately estimate the resources required or the scope of the work to be performed, do not complete our projects within the planned periods of time, or do not satisfy our obligations under the contracts, then profit may be significantly and negatively affected or losses may need to be recognized. Revisions in our contract estimates are reflected in the period in which the determination is made that facts and circumstances dictate a change of estimate. Favorable changes in estimates result in additional revenues recognized, and unfavorable changes in estimates result in a reduction of recognized revenues. Provisions for estimated losses on individual contracts are made in the period in which the loss first becomes known.

On certain contracts, or elements of contracts, costs are incurred subsequent to the signing of the contract, but prior to the rendering of service and associated recognition of revenue. Where such costs are incurred and realization of those costs is either paid for upfront or guaranteed by the contract, those costs are deferred and later expensed over the period of recognition of the related revenue. At December 31, 2004 and 2003, the Company had no deferred costs.

*Reimbursable Out-of-Pocket Expenses*

In addition to the standard costs incurred to provide services to our customers, we pay other incidental expenses, in excess of contract amounts, which are generally reimbursable under the terms of the contract. These expenses are included in the cost of revenue and are approximately equal to the amount recorded as reimbursement revenue.

*Credit Risks*

Financial instruments that subject us to concentrations of credit risks consist primarily of cash and cash equivalents and billed and unbilled accounts receivable. Our clients are primarily involved in the healthcare and pharmaceutical industries. The significant majority of our accounts receivable exposure is to large, well-established firms. Concentrations of credit risk with respect to billed and unbilled accounts receivable are mitigated, to some degree, based upon the nature of our clients. Management considers the likelihood of material credit risk exposure as remote.

The healthcare and life sciences industries may be affected by economic factors, which may impact accounts receivable. At December 31, 2004, approximately 77% of the outstanding trade receivables are

due from three customers who also accounted for approximately 80% of total sales. At December 31, 2003, approximately 79% of the outstanding trade receivables are due from four customers who also accounted for approximately 85% of total sales. Management does not believe that any single customer or geographic area represents significant credit risk.

*Fair Value of Financial Instruments*

The carrying value of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and certain other liabilities approximate their estimated fair values due to the short-term nature of these instruments. Investments available for sale are carried at fair value.

*Property and Equipment*

Property and equipment are stated at cost. Depreciation and amortization are provided on a straight-line basis in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives, which range from three to seven years. Leasehold improvements are amortized over the lives of the respective leases or the service lives of the improvements, whichever are shorter.

Upon sale or retirement of property and equipment, the costs and related accumulated depreciation are eliminated from the accounts, and any gain or loss on such disposition is reflected in the consolidated statements of operations. Expenditures for repairs and maintenance are charged to operations as incurred.

*Income Taxes*

We have elected, with the consent of our stockholders, under the Internal Revenue Code to be taxed as an S Corporation. The stockholders of an S Corporation are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for federal income taxes has been included in the financial statements. Certain specific deductions and credits flow through the Company to its stockholders.

This election is valid for New York pursuant to Chapter 4.5 of the New York Revenue and Taxation Code; however, New York law requires a minimum franchise tax in the amount of \$425 for which a provision has been provided. It is our intention to make periodic distributions to the stockholders so that their individual tax liabilities are met.

*Net Income (Loss) Per Share*

Net income (loss) per basic share is computed using the weighted average number of common shares outstanding. Net income (loss) per diluted share is computed using the weighted average common shares and potential common shares outstanding. Dilution is computed by applying the treasury stock method. Under this method, options and warrants are assumed to be exercised at the beginning of the period (or at the time of issuance, if later), and as if funds obtained thereby were used to purchase common stock at the average market price during the period. Options to purchase 332 shares of common stock were outstanding as of December 31, 2004.

*Recent Accounting Pronouncements*

In December 2004, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard No. 123 (revised 2004) Share-Based Payment (SFAS 123R), which is a revision of FASB Statement No. 123, Accounting for Stock-Based Compensation. Statement 123(R) supersedes APB Opinion No. 25, Accounting for Stock Issued to Employees, and amends FASB Statement No. 95, Statement of Cash Flows. Generally, the approach in Statement 123R is similar to the approach described in Statement 123. However, Statement 123R requires all share-based payments to employees, including

grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative.

Statement 123R must be adopted no later than July 1, 2005. Early adoption will be permitted in periods in which financial statements have not yet been issued. We expect to adopt Statement 123R on July 1, 2005. Statement 123R permits public companies to adopt its requirements using one of two methods:

1. A modified prospective method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of Statement 123R for all share-based payments granted after the effective date and (b) based on the requirements of Statement 123 for all awards granted to employees prior to the effective date of Statement 123R that remain unvested on the effective date.
2. A modified retrospective method which includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under Statement 123 for purposes of pro forma disclosures either (a) all prior periods presented or (b) prior interim periods of the year of adoption.

We are currently evaluating the two different methods for the adoption of Statement 123 and have not determined which of the two methods we will adopt.

To date, we have not issued stock-based payments to our employees, though we anticipate the issuance of stock options during 2005. As such, we have not recognized any stock-based compensation during 2004 and 2003.

We believe that the adoption of Statement 123R's fair value method will have a material impact on our result of operations, although it will have no impact on our overall financial position. The impact of adoption of Statement 123R cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. Statement 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. We cannot estimate what those amounts will be as it will depend on the levels of share-based payments granted in the future.

### **3. ACCOUNTS RECEIVABLE**

Trade accounts receivable are stated at the amount we expect to collect. We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We consider the following factors when determining the collectibility of a specific account: credit-worthiness, historical payment activity and changes in customer payment terms. We provide for estimated allowances through a charge to earnings and a credit to a receivable allowance. Balances that remain outstanding after we have made reasonable collection efforts are written off through a charge to the valuation and a credit to accounts receivable. As of December 31, 2004 and 2003, accounts receivable balances contained allowances in the amount of \$174,731 and \$390,350, respectively.

**4. FIXED ASSETS**

Property and equipment at December 31, 2004 and 2003 consisted of the following:

	2004	2003
Computers	\$ 32,701	\$ 32,701
Furniture and fixtures	17,811	13,938
Software	197,428	197,428
	247,940	244,067
Less Accumulated Depreciation	(197,279 )	(170,161 )
	\$ 50,661	\$ 73,906

Depreciation expense totaled \$27,118 and \$53,938 during the years ended December 31, 2004 and 2003, respectively.

**5. GRANT RESERVES**

We record the receipt of grant funds as a liability until fully earned by investigative sites contracted to conduct clinical study programs. As of December 31, 2004 and 2003, we had grant reserves remaining in the amount of \$508,657 and \$179,048, respectively.

**6. NOTE PAYABLE**

Notes payable as of December 31, 2004, consisted of the following:

Note payable to bank, secured by all assets of the Company bearing interest at a rate of prime plus 1% per annum, with monthly principal and interest payments of \$4,583, scheduled to mature in March of 2007. As of December 31, 2004 and 2003 the balance owing was \$123,750 and \$178,750, respectively.

The Company has recorded \$5,451 in interest expense as of December 31, 2004.

**7. NOTE PAYABLE RELATED PARTY**

As of December 31, 2004, officers and director of the Company has periodically loaned money to the Company for operating expenses. The loans bear interest ranging from prime plus .75 to 2.5% and are due on demand. At December 31, 2004 and 2003, the principal balance of the loans totaled \$781,812 and \$381,812.

**8. STOCKHOLDERS EQUITY**

We are authorized to issue 10,000 shares of no par common stock.

On March 29, 2002, we effectuated a 5 for 1 forward split of all issued and outstanding stock. All references to stockholders equity retroactively reflect to forward split.

As of December 31, 2004 and 2003, 50 shares of no par common stock were issued to the founder and President for cash in the amount of \$100.

**9. COMMITMENTS AND CONTINGENCIES**

During 2004, we entered into a new operating lease obligation totaling \$32,810. Future minimum lease payments on the operating lease obligation at December 31, 2004 are as follows:

For the year ending December 31:	
2005	\$ 6,562
2006	6,562
2007	6,562
2008	6,562
Total	\$ 26,248

The Company also leases its office facilities under operating leases that expire over the next two years. At December 31, 2004, the Company was obligated under non-cancelable operating leases with future minimum rentals as follows:

Years Ending	
2005	\$ 177,875
2006	59,292
Total	\$ 237,167

Rent expense was \$173,428 and \$163,910 for the years ended December 31, 2004 and 2003, respectively.

**10. PROFIT SHARING PLANS**

We provide a 401(k) salary deferral plan for eligible employees. Employees may elect to reduce their compensation by an amount that will not exceed the total amount allowed by the Internal Revenue Code for all contributions to qualified plans. The plan does provide for discretionary contributions by the employer. Contributions in the amount of \$17,943 and \$24,164 were accrued by the Company to the plan for the years ended December 31, 2004 and 2003, respectively.

**11. STOCK OPTION PLAN**

On March 29, 2002, the Company adopted its 2002 Stock Option Plan (the Plan) and granted incentive and nonqualified stock options with rights to purchase a maximum of 5,000 shares of the Company's no par value common stock. We have issued options to purchase 332 shares of stock pursuant to the plan, and no options were exercised as of December 31, 2004.

**Millennix Inc.**  
**Balance Sheet**

	September 30, 2005
<b>Assets</b>	
Current assets:	
Cash and equivalents	\$ 178,060
Accounts receivable, net of allowance for doubtful accounts	1,169,338
Prepaid expenses	44,926
Total current assets	1,392,324
Fixed assets, net of depreciation	16,394
	\$ 1,408,718
<b>Liabilities and Stockholders (Deficit)</b>	
Current liabilities:	
Accounts payable	\$ 268,331
Accrued payroll and employee benefits	75,278
Accrued liabilities	267
Grant reserves	251,738
Deferred revenue	623,176
Notes payable - current portion	55,000
Notes payable - related party	820,821
Total current liabilities	2,094,611
Long-term note payable, less current portion	27,500
	2,122,111
Commitments and contingencies	
Stockholders' equity (deficit):	
Common stock, no par value, 10,000 shares authorized, 50 shares issued and outstanding	100
Retained earnings (deficit)	(713,493 )
	(713,393 )
	\$ 1,408,718

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

**Millennix Inc.**  
**Statements of Operations**

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2005	2004	2005	2004
Service revenue	\$ 784,652	\$ 791,051	\$ 2,612,884	\$ 1,795,681
Reimbursement revenue	149,086	107,127	448,899	242,317
Total revenue	933,738	898,178	3,061,783	2,037,998
Cost of revenue	668,469	613,096	1,965,677	2,117,980
Gross profit	265,269	285,081	1,096,106	(79,982 )
Operating Expenses:				
Depreciation expense	11,423		34,268	
General and administrative expenses	44,443	28,089	132,753	115,043
Professional fees	1,514	6,738	9,865	8,938
Rent	44,469	43,579	132,517	129,849
Salaries and wages	155,982	129,804	443,254	421,277
Sales and marketing expenses	6,374	3,251	32,500	21,121
Total operating expenses	264,205	211,461	785,156	696,228
Net operating income (loss)	1,064	73,621	310,950	(776,209 )
Other income (expense):				
Interest expense	(6,599 )	(1,015 )	(17,246 )	(1,178 )
Net income (loss)	\$ (5,535 )	\$ 72,606	\$ 293,704	\$ (777,388 )
Weighted average number of common shares outstanding basic and fully diluted	50	50	50	50
Net income (loss) per share basic and fully diluted	\$ (110.69 )	\$ 1,452.11	\$ 5,874.08	\$ (15,547.76 )

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

**Millennix Inc.**  
**Statements of Cash Flows**

	<b>For the Nine Months Ended</b>	
	<b>September 30,</b>	
	<b>2005</b>	<b>2004</b>
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ 293,705	\$ (777,388 )
Adjustments to reconcile net income (loss) to net cash used by operating activities:		
Depreciation expense	34,268	
Changes in assets and liabilities:		
Accounts receivable	(528,757 )	(276,342 )
Prepaid expenses	(44,926 )	
Deferred revenue	409,074	(22,851 )
Accounts payable	(44,243 )	71,186 )
Accrued payroll and employee benefits	(9,040 )	(24,702 )
Accrued liabilities		(141,786 )
Grant reserves	(256,919 )	432,247
Net cash used by operating activities	(146,839 )	(739,635 )
<b>Cash flows from investing activities</b>		
Purchase of fixed assets, including internal-use software		(36,116 )
Net cash used by investing activities		(36,116 )
<b>Cash flows from financing activities</b>		
Proceeds from note payable related party	40,000	440,000
Payments on note payable related party	(992 )	
Proceeds from note payable		
Payments on note payable	(41,250 )	(41,250 )
Net cash provided by financing activities	(2,242 )	398,750
Net increase in cash and cash equivalents	(149,081 )	(377,001 )
Cash and cash equivalents, beginning of year	327,140	468,424
Cash and cash equivalents, end of year	\$ 178,060	\$ 91,423
Supplemental disclosures:		
Interest paid	\$ 5,451	\$
Income taxes paid	\$	\$

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

**MILLENNIX INC.**  
**NOTES TO FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION**

The interim financial statements included herein, presented in accordance with United States generally accepted accounting principles and stated in US dollars, have been prepared by us, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations, although we believe that the disclosures are adequate to make the information presented not misleading.

These statements reflect all adjustments, consisting of normal recurring adjustments, which, in the opinion of management, are necessary for fair presentation of the information contained therein. It is suggested that these interim financial statements be read in conjunction with our financial statements for the year ended December 31, 2004 and the notes thereto. We have followed the same accounting policies in the preparation of these consolidated interim reports.

Results of operations for the interim periods are not indicative of annual results.

**2. ACCOUNTS RECEIVABLE**

Trade accounts receivable are stated at the amount we expect to collect. We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We consider the following factors when determining the collectibility of a specific account: credit-worthiness, historical payment activity and changes in customer payment terms. We provide for estimated allowances through a charge to earnings and a credit to a receivable allowance. Balances that remain outstanding after we have made reasonable collection efforts are written off through a charge to the valuation and a credit to accounts receivable. As of September 30, 2005 and 2004, accounts receivable balances contained allowances in the amount of \$174,731 and \$390,350, respectively.

**3. FIXED ASSETS**

During the nine months ended September 30, 2005 and 2004, depreciation expense totaled \$34,268 and \$0, respectively.

**4. GRANT RESERVES**

We record the receipt of grant funds as a liability until fully earned by investigative sites contracted to conduct clinical study programs. As of September 30, 2005 and 2004, we had grant reserves remaining in the amount of \$251,738 and \$611,296 respectively.

**5. NOTE PAYABLE**

Notes payable as of September 30, 2005, consisted of the following:

Note payable to bank, secured by all assets of the Company bearing interest at a rate of prime plus 1% per annum, with monthly principal and interest payments of \$4,583, scheduled to mature in March of 2007. As of September 30, 2005 and 2004 the balance owing was \$82,500 and \$137,500, respectively.

The Company has recorded \$17,246 in interest expense as of September 30, 2005.

**6. NOTE PAYABLE RELATED PARTY**

As of September 30, 2005, officers and director of the Company has periodically loaned money to the Company for operating expenses. The loans bear interest ranging from prime plus .75 to 2.5% and are due on demand. At September 30, 2005 and 2004, the principal balance of the loans totaled \$820,821 and \$821,812.

**7. STOCKHOLDERS EQUITY**

The Company is authorized to issue 10,000 shares of no par common stock.

On March 29, 2002, the Company effectuated a 5 for 1 forward split of all issued and outstanding stock. All reference to stockholders equity retroactively reflect the forward split.

As of December 31, 2004 and 2003, 50 shares of no par common stock were issued to the founder and President for cash in the amount of \$100.

There have been no other issuances as of September 30, 2005.

**8. SUBSEQUENT EVENTS**

On November 9, 2005, the Company entered into an Asset Purchase Agreement with IT&E International Group, ( IT&E ), whereby the Company has agreed to transfer its assets and certain liabilities in exchange for \$1,100,000 in cash and 10,416,667 shares of IT&E s common stock. Pursuant to the Agreement, an additional \$1,400,000 will be paid contingent upon the achievement of specific revenue milestones during the years ending December 31, 2006 and 2007.

**IT&E Internaoional Group**  
**Unaudited Pro Forma Condensed Consolidated Financial Statements**

On November 9, 2005 and December 22, 2005, IT&E International Group (the Company, we or our) entered into a series of transactions related to a private placement of the registrant's senior secured convertible promissory notes, the acquisition of assets from Millennix Inc., and the amendment of agreements with Laurus Master Fund, Ltd, including the payoff of the outstanding balance of a \$5,000,000 Secured Convertible Term Note, dated October 18, 2004. Summaries of these transactions are as follows:

**The Private Placement**

On November 9, 2005, in connection with the private placement of our senior secured convertible promissory notes to certain investors (Private Placement), we entered into a Securities Purchase Agreement that obligated the Company to issue senior secured convertible promissory notes (Senior Notes) in the aggregate principal amount of up to \$11,500,000 and warrants to purchase an additional 82,142,832 shares of common stock of the registrant.

At the initial closing, we issued Senior Notes in the aggregate principal amount of \$7,000,000 and warrants to purchase an additional 49,999,985 shares of our common stock at an exercise price of \$0.10 per share. Of this amount, \$5,800,000 was issued to ComVest Investment Partners II LLC (ComVest).

On December 22, 2005, in connection with the second closing of the Private Placement, we issued Senior Notes in the aggregate principal amount of \$4,500,000 to ComVest along with a warrant to purchase up to an additional 32,142,847 shares of our common stock at an exercise price of \$0.10 per share.

The Senior Notes shall automatically convert into shares of the Company's Series D Convertible Preferred Stock (Series D Preferred Stock) equal to the total outstanding principal amount under all issued and outstanding Senior Notes divided by \$1,000 upon the due authorization of such Series D Preferred Stock and the filing of a Certificate of Designations setting forth the rights, preferences and privileges of such Series D Preferred Stock with the relevant Secretary of State. Each share of Series D Preferred Stock shall initially be convertible at the option of the holder into 14,285.71 shares of the Company's common stock. The Company has recorded this transaction as equity since the number of shares to be issued is fixed and determinable, and the conversion of the Senior Notes is an event certain to occur since our Board of Directors and shareholders have previously approved the creation of the Series D Preferred Stock for this purpose and the conversion of the Senior Note into equity is subject only to the filing of a definitive Schedule 14C Information Statement related to the actions taken in connection with the Private Placement and the expiration of the applicable waiting period prescribed by Rule 14c-2 of the Securities Exchange Act of 1934, as amended. In addition, in accordance with Emerging Issues Task Force No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*, since the Senior Notes are convertible into equity at beneficial conversion rates, an embedded beneficial conversion feature has been computed at approximately \$8.1 million and is being treated as a dividend to the preferred shareholders and will result in a reduction of the earnings (loss) available to common shareholders for earnings per share purposes.

In addition, pursuant to the Securities Purchase Agreement, we have given ComVest the right to purchase an additional Senior Note in the principal amount of up to \$5,000,000 and warrants to purchase up to an additional 35,714,256 shares of common stock for a period of six (6) months after November 9, 2005.

**The Millennix Acquisition**

On November 9, 2005, we also entered into an Asset Purchase Agreement pursuant to which we purchased substantially all of the assets of Millennix Inc. (Millennix). Millennix is a contract research

organization located in the State of New York. The purchase price paid for such assets was \$1,100,000 in cash, 10,416,667 shares of the registrant's common stock (the Acquisition Shares) and a possible additional \$1,400,000 in cash, contingent on the achievement of certain earnout milestones. Further, in connection with the acquisition of the Millennix assets, the registrant also assumed certain liabilities of Millennix, including, without limitation, the amounts outstanding under certain promissory notes in the aggregate principal amount of approximately \$850,000. Additionally, we also issued fully vested stock options to certain Millennix employees. A portion of the proceeds from the Private Placement was used to fund the cash portion of the consideration paid for the Millennix assets.

Pursuant to the Asset Purchase Agreement, Dr. Gene Resnick, the sole shareholder of Millennix, is obligated to indemnify the Company for breaches of the representations and warranties of Millennix contained in the Asset Purchase Agreement for a period of twenty-four (24) months after the closing of the acquisition of Millennix up to a maximum aggregate amount of \$275,000. The Company entered into an Indemnity Escrow Agreement with Dr. Resnick and Union Bank of California, pursuant to which we deposited \$110,000 of the cash portion of the purchase price for the Millennix assets with Union Bank of California as partial security for the indemnification obligations of Millennix and Dr. Resnick. Any funds remaining in the escrow account twelve (12) months after the closing of the acquisition of Millennix will be released to Millennix (subject to the existence of any outstanding and unresolved claims).

### **The Laurus Amendment**

The Company had previously entered into the following agreements with Laurus Master Fund, Ltd. (Laurus): (i) a Secured Convertible Term Note, dated October 18, 2004 (the Laurus Note); (ii) a Common Stock Purchase Warrant, dated October 18, 2004 (the Laurus Warrant); (iii) a Registration Rights Agreement, dated October 18, 2004 (Registration Rights Agreement); and (iv) the Securities Purchase Agreement, dated October 18, 2004, as amended (the Securities Purchase Agreement) and together with the Laurus Note, the Laurus Warrant and the Registration Rights Agreement and the additional agreements referenced therein, the Loan Documents).

On November 9, 2005, we entered into an amendment to the Loan Documents (the Amendment). Pursuant to the Amendment, we pre-paid the entire amount outstanding under the Laurus Note, including all outstanding principal and accrued interest, together with a pre-payment penalty of \$650,000. In addition, we amended the Laurus Warrant to reduce the exercise price of such Laurus Warrant to \$0.22 per share. This repricing of the warrants resulted in an additional cost of pre-paying the loan of approximately, \$38,000.

The following presents our unaudited pro forma financial information for the year ended December 31, 2004 and for the nine months ended September 30, 2005. The pro forma statements of operations are presented as if these transactions occurred as of January 1, 2004. The unaudited pro forma balance sheet has been prepared as if the transactions occurred as of September 30, 2005. The pro forma adjustments are based upon information available and certain assumptions that we believe are reasonable.

The unaudited pro forma condensed consolidated statements do not necessarily represent the actual results that would have been achieved had the transactions occurred on the dates presented, nor are they indicative of future operations. These unaudited pro forma condensed financial statements should be read in conjunction with the companies' respective historical financial statements and notes included thereto.

**IT&E INTERNATIONAL GROUP**  
**Unaudited Consolidated Combined Pro Forma Balance Sheet**  
**September 30, 2005**

	IT&E International Group September 30, 2005 (unaudited)	Millennix Inc. September 30, 2005 (unaudited)	Notes	Pro Forma Adjustments	Pro Forma Combined
<b>Assets</b>					
Current assets:					
Cash	\$ 2,177,026	\$ 178,060	1 )	4,661,638	\$ 7,016,724
Accounts receivable, net of allowance for doubtful accounts	2,418,511	1,169,338			3,587,849
Unbilled revenue	79,312				79,312
Prepaid and other current assets	228,614	44,926	2 )	(74,264 )	199,276
<b>Total current assets</b>	<b>4,903,463</b>	<b>1,392,324</b>		<b>4,587,374</b>	<b>10,883,161</b>
Fixed assets, net	265,956	16,394			282,350
Loan fees, net	590,299		3 )	(590,299 )	
Deposits	11,679				11,679
Intangibles			4 )	1,031,000	1,031,000
Goodwill			4 )	3,147,102	3,147,102
	<b>\$ 5,771,397</b>	<b>\$ 1,408,718</b>		<b>\$ 8,175,177</b>	<b>\$ 15,355,292</b>
<b>Liabilities and Stockholders Equity</b>					
Current liabilities:					
Accounts payable	\$ 394,662	\$ 268,331			\$ 662,993
Accrued payroll and employee benefits	489,029	75,278			564,307
Current portion of capital lease obligations	3,441				3,441
Notes payable to related parties		820,821			820,821
Current portion of note payable	2,123,077	55,000	5 )	(2,178,077 )	
Accrued interest on note payable	41,285		5 )	(41,285 )	
Deferred revenue		874,914			874,914
Deferred rent	24,927				24,927
Other accrued liabilities	114,897	267			115,164
<b>Total current liabilities</b>	<b>3,191,318</b>	<b>2,094,611</b>		<b>(2,219,362 )</b>	<b>3,066,567</b>
Long-term capital lease obligations, less current portion	13,388				13,388
Long-term note payable, less current portion	2,300,000	27,500	5 )	(2,327,500 )	
	5,504,706	2,122,111		(4,546,862 )	3,079,955
<b>Stockholders equity</b>	<b>266,691</b>	<b>(713,393 )</b>	<b>6 )</b>	<b>12,722,039</b>	<b>12,275,337</b>
	<b>\$ 5,771,397</b>	<b>\$ 1,408,718</b>		<b>\$ 8,175,177</b>	<b>\$ 15,355,292</b>

See accompanying notes to the unaudited consolidated combined pro forma financial statements

**IT&E INTERNATIONAL GROUP**  
**Unaudited Consolidated Combined Pro Forma Statements of Operations**  
**For the year ended December 31, 2004**

	IT&E International Group (restated)	Millennix Inc.	Notes	Pro Forma Adjustments	Pro Forma Combined
Service revenue	\$ 13,437,388	\$ 2,598,543			\$ 16,035,931
Reimbursement revenue	405,749	413,580			819,329
Total revenue	13,843,137	3,012,123			16,855,260
Cost of revenue	9,497,806	2,893,033			12,390,839
Reimbursable out-of-pocket expenses	405,749				405,749
Total cost of sales	9,903,555	2,893,033			12,796,588
Gross profit	3,939,582	119,090			4,058,672
Operating Expenses:					
General and administrative expenses	2,815,865	790,174			3,606,039
Sales and marketing expenses	982,077	27,244			1,009,321
Depreciation expense	21,588	27,118			48,706
Amortization of intangibles			1 )	285,393	285,393
Officer compensation	457,981	162,488	2 )	77,500	697,969
Total operating expenses	4,277,511	1,007,024			5,647,428
Net operating loss	(337,929 )	(887,934 )			(1,588,756 )
Other income (expense):					
Interest expense	(102,131 )	(5,451 )	3 )	38,455	(69,127 )
Loan fee amortization	(60,235 )		3 )	60,235	
Fees on long-term debt			4 )	(687,922 )	(687,922 )
Write off of loan fees			5 )	(867,379 )	(867,379 )
Other	32,831	5,000			37,831
Total other income (expense)	(129,535 )	(451 )			(1,586,597 )
Loss before provision for income taxes	(467,464 )	(888,385 )			(3,175,353 )
Provision for income taxes					
Net loss	(467,464 )	(888,385 )			(3,175,353 )
Beneficial Conversion Feature					(8,106,350 )
Net loss applicable to common stockholders	\$ (467,464 )	\$ (888,385 )			\$ (11,281,703 )
Weighted average number of common shares outstanding basic and fully diluted	19,000,000		6 )	10,779,167	29,779,167
Net income (loss) per share basic and fully diluted	\$ (0.02 )				\$ (0.38 )

See accompanying notes to the unaudited consolidated combined pro forma financial statements

**IT&E INTERNATIONAL GROUP**  
**Unaudited Consolidated Combined Pro Forma Statements of Operations**  
**For the nine months ended September 30, 2005**

	<b>IT&amp;E International Group</b>	<b>Millennix Inc.</b>	<b>Notes</b>	<b>Pro Forma Adjustments</b>	<b>Pro Forma Combined</b>
Service revenue	\$ 13,036,358	\$ 2,612,884			\$ 15,649,242
Reimbursement revenue	379,833	448,899			828,732
Total revenue	13,416,191	3,061,783			16,477,974
Cost of revenue	8,907,476	1,965,677			10,873,153
Reimbursable out-of-pocket expenses	379,833				379,833
Total cost of sales	9,287,309	1,965,677			11,252,986
Gross profit	4,128,882	1,096,106			5,224,988
Operating Expenses:					
General and administrative expenses	2,405,345	588,388			2,993,733
Sales and marketing expenses	988,273	32,500			1,020,773
Depreciation expense	66,491	34,268			100,759
Amortization of intangibles			1 )	140,545	140,545
Officer compensation	778,582	130,000	2 )	50,000	958,582
Total operating expenses	4,238,691	785,156			5,214,392
Net operating income (loss)	(109,809 )	310,950			10,596
Other income (expense):					
Interest income	58,331				58,331
Interest expense	(375,960 )	(17,246 )	3 )	391,406	(1,800 )
Loan fee amortization	(216,845 )		4 )	216,845	
Fees on long-term debt	(214,039 )		4 )	214,039	
Non-cash financing costs	(62,500 )				(62,500 )
Total other income (expense)	(811,013 )	(17,246 )			(5,969 )
Income (loss) before provision for income taxes	(920,822 )	293,704			4,627
Provision for income taxes					
Net income (loss)	\$ (920,822 )	\$ 293,704			\$ 4,627
Weighted average number of common shares outstanding basic and fully diluted	20,412,124		5 )	10,779,167	31,191,291
Net income (loss) per share basic and fully diluted	\$ (0.05 )				\$ 0.00

See accompanying notes to the unaudited consolidated combined pro forma financial statements

**IT&E International Group**  
**Notes to Unaudited Consolidated Combined Pro Forma Financial Statements**

**Balance Sheets at September 30, 2005**

- 1) Reflects net cash received related to ComVest Private Placement (\$11,012,500), partially offset by cash used to pay outstanding balances (principal, accrued interest and loan prepayment penalty) payable to Laurus (\$5,114,362) and Bank of New York (\$82,500) and cash used to acquire assets of Millennix Inc. (\$1,100,000) and its related transaction costs (\$54,000).
- 2) Includes write off of the capitalized transaction costs related to the purchase of Millennix Inc. (\$64,459) and the ComVest Private Placement (\$9,805).
- 3) Reflects the write off of the unamortized portion of the loan fees related to the note payable to Laurus.
- 4) Reflects the Intangible Assets (\$1,031,000) and Goodwill (\$3,147,102) acquired through the Millennix acquisition.
- 5) Reflects the repayment of principal amount and accrued interest related to notes payable to Laurus (\$4,464,362) and Bank of New York (\$82,500).
- 6) Includes: a) convertible notes payable net of related transaction costs for the ComVest Private Placement (\$11,002,695); b) Costs associated with the pay off of the Laurus note payable (\$1,240,299); c) common stock issued related to the acquisition of Millennix Inc. (\$2,246,250); and d) elimination of the net equity of Millennix Inc. (\$713,393).

**Statements of Operations for the year ended December 31, 2004**

- 1) Reflects amortization of Intangibles.
- 2) Reflects adjustment to officers compensation in conjunction of the Millennix acquisition.
- 3) Reflects the reversal of interest expense and amortization of loan fees related to the Laurus note payable as if the repayment occurred on January 1, 2004.
- 4) Reflects the prepayment penalties (\$650,000) and non-cash costs related to the repricing of warrants (\$37,922) related to the Laurus note payable.
- 5) Reflects total loan fees related to Laurus note payable including the implied cost of warrants.
- 6) Reflects the net shares issued in connection with the Millennix transaction.

**Statements of Operations for the nine months ended September 30, 2005**

- 1) Reflects amortization of Intangibles.
- 2) Reflects adjustment to officers compensation in conjunction to the Millennix acquisition.
- 3) Reflects the reversal of interest expense related to notes payable to Laurus (\$374,160) and Bank of New York (\$17,246) as if the repayments occurred on January 1, 2004.

- 4) Reflects the reversal of amortization of loan fees and fee on long-term debt related to the Laurus note payable.
- 5) Reflects the net shares issued in connection with the Millennix transaction.

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**Appendix G**

**IT&E INTERNATIONAL GROUP**

**2005 EQUITY INCENTIVE PLAN**

**1. PURPOSES.** The primary purpose of this IT&E International Group 2005 Equity Incentive Plan (the *Plan*) is to provide a means by which the Company can retain and maximize the services of its current Employees, Directors and Consultants, and secure, retain and maximize the services of new Employees, Directors and Consultants, by providing Stock Awards, including Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock Awards and stock bonuses, to such persons on the terms and conditions set forth in the Plan. In addition, the Plan is intended to generate proceeds from the sale of Common Stock pursuant to Stock Awards that shall be used as general funds of the Company

**2. DEFINED TERMS.** Capitalized terms in this Plan shall have the meanings set forth in **Appendix A** attached hereto, unless defined elsewhere in this Plan or the context of their use clearly indicates a different meaning.

**3. ADMINISTRATION.**

**3.1 Authority of Board.** Unless and until the Board decides to delegate administration of the Plan to a Committee as set forth in Section 3.2 below, the Board shall have full authority to administer the Plan, subject only to the express provisions and limitations set forth in the Plan and any applicable laws. Without limiting the generality of the foregoing, the Board shall be fully empowered to: (i) determine, from time to time, the recipients of Stock Awards and the terms upon which Stock Awards shall be granted to such recipients; (ii) construe and interpret, and correct any defects, omissions or inconsistencies in, the Plan and any Stock Awards; (iii) terminate, suspend or amend the Plan or any Stock Award as provided in Section 11; and (iv) exercise such powers and perform such acts consistent with the provisions of the Plan as the Board deems necessary or expedient to promote the best interests of the Company and its stockholders. The determinations of the Board with respect to the Plan shall not be subject to review by any Person and shall be final, binding and conclusive on the Company and all other Persons.

**3.2 Delegation to Committee.** In accordance with the Board's authority under the Delaware General Corporation Law and the Company's Bylaws, the Board may delegate administration of the Plan to a Committee, which Committee shall, upon such delegation, be empowered to exercise the full authority of the Board with respect to the Plan.

**4. COMMON STOCK SUBJECT TO THE PLAN.**

**4.1 Reserve Pool.** Subject to the provisions of Section 10 relating to Capitalization Adjustments, an aggregate of 25,000,000 shares of Common Stock (the *Reserve Pool*) may be issued pursuant to Stock Awards. If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the shares of Common Stock not acquired under such Stock Award shall automatically revert to the Reserve Pool and again become available for issuance under the Plan. During the term of the Plan, the Company shall keep available in the Reserve Pool at all times a number of shares of Common Stock sufficient to satisfy all outstanding Stock Awards.

**4.2 Limitation on Number of Shares.** To the extent required by CCR Title 10, the total number of shares of Common Stock issuable upon exercise of all outstanding Stock Awards, together with the total number of shares of Common Stock provided for under any stock bonus or similar plan of the Company, shall not exceed the applicable percentage as calculated in accordance with the conditions and exclusions of CCR Title 10, based on the shares of Common Stock of the Company that are outstanding at the time the calculation is made.



## 5. ELIGIBILITY.

**5.1 Employees.** Employees shall be eligible to receive each of the types of Stock Awards provided for in the Plan.

**5.2 Directors.** Directors shall be eligible to receive each of the types of Stock Awards, except Incentive Stock Options, provided for in the Plan.

**5.3 Consultants.** To the extent permitted by applicable law, consultants shall be eligible to receive each of the types of Stock Awards, except Incentive Stock Options, provided for in the Plan.

**5.4 Ten Percent Stockholders.** In addition to any other applicable restrictions set forth in this Section 5, a Ten Percent Stockholder shall not be granted: (i) an Incentive Stock Option unless the exercise price of such Incentive Stock Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant and such Incentive Stock Option is not exercisable after the expiration of five (5) years from the date of grant; (ii) a Nonstatutory Stock Option unless the exercise price of such Nonstatutory Stock Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant, except as otherwise permitted by CCR Title 10 at the time of the grant of the Nonstatutory Stock Option; (iii) a Restricted Stock Award unless the purchase price of the Common Stock issuable upon exercise of such Restricted Stock Award is at least one hundred percent (100%) of the Fair Market Value of the Common Stock on the date of grant, except as otherwise permitted by CCR Title 10 at the time of the grant of the Restricted Stock Award.

### **5.5 Proprietary Information and Inventions Agreement.**

(a) Prior to being granted any Award under the Plan, each Employee shall have executed and delivered to the Company a copy of the Company's standard proprietary information and inventions agreement or such other agreement containing similar obligations of confidentiality as may be approved by the Board at the time the Award is granted (any such agreement being referred to herein as a ***Proprietary Information and Inventions Agreement***). In the event that any Award is inadvertently granted to an Employee who has not, as of the date of such grant, entered into a Proprietary Information and Inventions Agreement with the Company, such Award shall be deemed null and void *ab initio*.

(b) In the event that any Employee breaches any provision of the Proprietary Information and Inventions Agreement between such Employee and the Company, such Employee shall no longer be eligible to receive Awards pursuant to this Plan. Moreover, such Employee shall be deemed, as of the date of such Employee's breach of such Proprietary Information and Inventions Agreement, to have forfeited all outstanding Awards previously granted to and then held by such Employee, regardless of whether such Awards are then vested or exercisable.

## 6. PROVISIONS APPLICABLE TO ALL STOCK AWARDS.

**6.1 No Stockholder Rights.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to any Stock Award held by such Participant unless and until such Participant has satisfied all requirements for the exercise of the Stock Award pursuant to its terms.

**6.2 No Employment or Other Service Rights.** Nothing in the Plan or any Stock Award Agreement shall confer upon any Participant any right to continue to serve the Company or an Affiliate in any capacity. Likewise, nothing in the Plan or any Stock Award shall affect the right of the Company or any applicable Affiliate to terminate: (i) the employment of an Employee with or without notice and with or without Cause; (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate; or (iii) the service of a Director pursuant to the bylaws of the Company or

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any applicable Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

**6.3 Investment Assurances.** At any time that the issuance of the shares of Common Stock issuable upon the exercise of a Stock Award has not been registered under an effective registration statement under the Securities Act, the Company may: (i) require a Participant, as a condition of acquiring Common Stock under such Stock Award, to give written assurances satisfactory to the Company (a) as to the Participant's knowledge and experience in financial and business matters and capability to evaluate the merits and risks of acquiring such Common Stock under such Stock Award and (b) stating that the Participant is acquiring such Common Stock under the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing such Common Stock; and (ii) place legends, including, without limitation, legends restricting the transfer of such Common Stock, on any and all stock certificates representing such Common Stock in order to comply with applicable securities laws.

**6.4 Withholding Obligations.** To the extent provided by the terms of a Stock Award Agreement, the Participant may satisfy any federal, state or local tax withholding obligation relating to the acquisition of Common Stock under a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; or (ii) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the acquisition of Common Stock under the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid variable award accounting).

**6.5 Vesting.** The Board or Committee may provide that the total number of shares of Common Stock subject to a Stock Award shall vest in installments over any given period of time. Criteria for determining the vesting of shares of Common Stock subject to a Stock Award may be based solely on the passage of time or on any other criteria, including, without limitation, the performance of the Participant, deemed appropriate by the Board or Committee.

**6.6 Acceleration of Exercisability and Vesting.** The Board shall have the power to accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

**6.7 Terms of Repurchase Options.** The terms of any repurchase option in favor of the Company with respect to shares of Common Stock issuable pursuant to a Stock Award shall be specified in the applicable Stock Award Agreement. The price per share of Common Stock at which such repurchase option may be exercised may be either: (i) the Fair Market Value of the shares of Common Stock on the date of the termination of the applicable Participant's Continuous Service; or (ii) the lower of (a) the Fair Market Value of the shares of Common Stock on the date of repurchase and (b) the original purchase price per share of Common Stock paid by the applicable Participant; *provided, however*, that terms of any repurchase option shall comply at all times with the provisions of CCR Title 10 relating to presumptively reasonable repurchase prices.

**6.8 Information Obligation.** To the extent required by CCR Title 10, the Company shall deliver financial statements to Participants at least annually; *provided, however*, that the obligation to deliver financial statements shall not apply to Employees whose duties with the Company assure them access to equivalent information.

## 7. OPTIONS.

**7.1 Stock Award Agreements for Options.** Each Stock Award Agreement for an Option shall be in such form and shall contain such terms and conditions as the Board or Committee shall deem appropriate.

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The terms and conditions of such Stock Award Agreements may change from time to time, and the terms and conditions of Stock Award Agreements for separate Options need not be identical; *provided, however*, that each Stock Award Agreement for an Option shall include (through incorporation of provisions hereof by reference in the Stock Award Agreement or otherwise) the substance of the provisions set forth in this Section 7.

**7.2 Designation.** All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option.

**7.3 Term.** Subject to the provisions of Section 5.4 above, no Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

**7.4 Minimum Vesting.** Notwithstanding Section 6.5 above, to the extent required by CCR Title 10: (i) Options granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock at a rate of at least twenty percent (20%) per year over five (5) years from the date the Option was granted, subject to reasonable conditions such as Continuous Service; and (ii) Options granted to Officers, Directors or Consultants may be made fully exercisable at any time or during any period established by the Board or Committee, subject to reasonable conditions such as Continuous Service.

**7.5 Consideration.**

(a) The purchase price of Common 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) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt by the Company of cash (or a check) in the amount of, or the receipt by the Company of a copy of irrevocable instructions previously delivered by the purchaser to the purchaser's broker instructing such broker to pay to the Company an amount equal to, the aggregate exercise price for the number of shares of Common Stock being issued to the purchaser in connection with the exercise of the Option from the proceeds of the simultaneous sale of the Common Stock.

(b) Notwithstanding Section 7.5(a) above: (i) unless otherwise specifically provided in the Option, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes); and (ii) in the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid (a) 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 and (b) the treatment of the Option as a variable award for financial accounting purposes.

**7.6 Early Exercise.** An Option may include a provision whereby the Participant may elect at any time before the Participant's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of such shares of Common Stock. Subject to Section 6.7 above, any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate.



## 7.7 Termination of Continuous Service.

(a) **Termination Other Than for Cause or As a Result of Death or Disability.** In the event that a Participant's Continuous Service terminates other than for Cause or as a result of the Participant's Disability or death, the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise such Option as of the date of termination) at any time within the period (the *Post-Termination Exercise Period*) ending on the earlier of: (i) the expiration of the term of the Option as set forth in the applicable Stock Award Agreement; or (ii) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Stock Award Agreement, which period shall not be less than thirty (30) days). If, after the termination of such Participant's Continuous Service, such Participant does not exercise his or her Option within such Post-Termination Exercise Period, the Option shall terminate.

(b) **Termination for Cause.** In the event a Participant's Continuous Service is terminated for Cause, the Option shall terminate upon the termination date of such Participant's Continuous Service, and the Participant shall be prohibited from exercising his or her Option as of the time of such termination.

(c) **Termination As a Result of Disability.** In the event that a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option (to the extent that the Participant was entitled to exercise such Option as of the date of termination), at any time during the Post-Termination Exercise Period ending on the earlier of: (i) the expiration of the term of the Option as set forth in the Stock Award Agreement; or (ii) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period shall not be less than six (6) months). If, after termination of Continuous Service, the Participant does not exercise his or her Option within such Post-Termination Exercise Period, the Option shall terminate.

(d) **Termination As a Result of Death.** In the event that a Participant's Continuous Service terminates as a result of the Participant's death or a Participant dies within any applicable Post-Termination Exercise Period, then such Participant's Option may be exercised (to the extent the Participant was entitled to exercise such Option as of the date of death) by the Participant's estate, by a Person who acquired the right to exercise the Option by bequest or inheritance or by a Person designated to exercise the option upon the Participant's death pursuant to Section 7.8(b) or 7.9(b) below, at any time during the Post-Termination Exercise Period ending on the earlier of: (i) the expiration of the term of the Option as set forth in the Stock Award Agreement; or (ii) the date eighteen (18) months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period shall not be less than six (6) months). If, after termination of Continuous Service, the Participant does not exercise his or her Option within such Post-Termination Exercise Period, the Option shall terminate.

## 7.8 Special Provisions for Incentive Stock Options.

(a) **Exercise Price.** Subject to the provisions of Section 5.4 above, the exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Incentive Stock Option on the date the Incentive Stock Option is granted. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Incentive Stock Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(b) **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 Participant only by



the Participant. Notwithstanding the foregoing, a Participant 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 such Participant, shall thereafter be entitled to exercise such Participant's Incentive Stock Option.

**(c) \$100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Participant during any calendar year under all plans of the Company and its Affiliates exceeds \$100,000, the Incentive Stock Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Stock Award Agreement(s).

## **7.9 Special Provisions for Nonstatutory Stock Options.**

**(a) Exercise Price.** Subject to the provisions of Section 5.4 above, the exercise price of each Nonstatutory Stock Option shall be not less than eighty-five percent (85%) of the Fair Market Value of the Common Stock subject to the Nonstatutory Stock Option on the date the Nonstatutory Stock Option is granted. Notwithstanding the foregoing, a Nonstatutory Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Nonstatutory Stock Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

**(b) Transferability.** A Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution and, to the extent provided in the Stock Award Agreement and as permitted by CCR Title 10 at the time of the grant of the Nonstatutory Stock Option, and shall be exercisable during the lifetime of the Participant only by the Participant. If a Nonstatutory Stock Option does not provide for transferability, then such 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 Participant only by the Participant. Notwithstanding the foregoing, a Participant 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 such Participant, shall thereafter be entitled to exercise such Participant's Nonstatutory Stock Option.

## **8. STOCK BONUSES.**

**8.1 Stock Award Agreements for Stock Bonuses.** Each Stock Award Agreement for a stock bonus shall be in such form and shall contain such terms and conditions as the Board or Committee shall deem appropriate. The terms and conditions of such Stock Award Agreements may change from time to time, and the terms and conditions of Stock Award Agreements for separate stock bonuses need not be identical; *provided, however*, that each Stock Award Agreement for a stock bonus shall include (through incorporation of provisions hereof by reference in the Stock Award Agreement or otherwise) the substance of the provisions set forth in this Section 8.

**8.2 Consideration.** A stock bonus may be awarded in consideration for past services actually rendered to the Company or an Affiliate for its benefit.

**8.3 Termination of Participant's Continuous Service.** In the event that a Participant's Continuous Service terminates, the Company may reacquire, for no consideration, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the Stock Award Agreement for the stock bonus.

**8.4 Transferability.** Rights to acquire shares of Common Stock under the Stock Award Agreement for a stock bonus shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant.

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## 9. RESTRICTED STOCK AWARDS.

**9.1 Stock Award Agreements for Restricted Stock Awards.** Each Stock Award Agreement for a Restricted Stock Award shall be in such form and shall contain such terms and conditions as the Board or Committee shall deem appropriate. The terms and conditions of such Stock Award Agreements may change from time to time, and the terms and conditions of Stock Award Agreements for separate Restricted Stock Awards need not be identical; *provided, however*, that each Stock Award Agreement for a Restricted Stock Award shall include (through incorporation of provisions hereof by reference in the Stock Award Agreement or otherwise) the substance of the provisions set forth in this Section 9.

**9.2 Purchase Price.** At the time of grant of a Restricted Stock Award, the Board or Committee will determine the price to be paid by the Participant for each share of Common Stock subject to such Restricted Stock Award. Subject to the provisions of Section 5.4 above, the purchase price of Restricted Stock Awards shall not be less than eighty-five percent (85%) of the Fair Market Value of the Common Stock on the date such Restricted Stock Award is made or at the time the purchase is consummated. A Restricted Stock Award may be awarded as a stock bonus (i.e., with no cash purchase price to be paid) to the extent permissible under applicable law.

**9.3 Consideration.** At the time of the grant of a Restricted Stock Award, the Board will determine the consideration permissible for the payment of the purchase price of the Restricted Stock Award. The purchase price of Common Stock acquired pursuant to the Stock Award Agreement for the Restricted Stock Award shall be paid either: (i) in cash at the time of purchase; (ii) at the discretion of the Board, according to a deferred payment or other similar arrangement with the Participant; (iii) by services rendered or to be rendered to the Company; or (iii) in any other form of legal consideration that may be acceptable to the Board in its discretion.

**9.4 Termination of Participant's Continuous Service.** Subject to Section 6.7, in the event that a Participant's Continuous Service terminates, the Company may repurchase or otherwise reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the Stock Award Agreement for such Participant's Restricted Stock Award.

**9.5 Transferability.** Rights to acquire shares of Common Stock under the Stock Award Agreement for a Restricted Stock Award shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant.

## 10. ADJUSTMENTS UPON CHANGES IN STOCK.

**10.1 Capitalization Adjustments.** If any change is made in, or other event occurs with respect to, the Common Stock of the Company 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 (each a *Capitalization Adjustment*)), the Plan will be appropriately adjusted in the class and maximum number of securities subject to the Plan pursuant to Section 4.1, and the outstanding Stock Awards will be appropriately adjusted in the class and number of securities and price per share of Common Stock subject to such outstanding Stock Awards; *provided, however*, that the conversion of any convertible securities of the Company shall not be treated as a transaction without receipt of consideration by the Company and shall not give rise to a Capitalization Adjustment pursuant to this Section 10.1. The Board or Committee shall make such adjustments, which shall be final, binding and conclusive.

**10.2 Dissolution or Liquidation.** In the event of a dissolution or liquidation of the Company, then all outstanding Stock Awards shall terminate immediately prior to the completion of such dissolution or liquidation, and shares of Common Stock subject to any repurchase option in favor of the Company may

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be repurchased by the Company, notwithstanding the fact whether or not the applicable Participant's Continuous Service has terminated.

### 10.3 Corporate Transaction.

(a) In the event of a Corporate Transaction, any surviving corporation or acquiring corporation may (but need not) assume or continue any or all Stock Awards outstanding under the Plan or may (but need not) substitute similar stock awards for Stock Awards outstanding under the Plan (including an award to acquire the same consideration paid to the stockholders or the Company, as the case may be, pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Stock Awards may be assigned by the Company to the successor of the Company or to the acquiring corporation (or such successor's or acquiring corporation's parent company), if any, in connection with such Corporate Transaction. In the event any surviving corporation or acquiring corporation elects to assume or continue any or all Stock Awards outstanding under the Plan, such Stock Awards shall remain in effect in accordance with the terms of this Plan and the applicable Stock Award Agreements, but shall thereafter represent the right to receive (upon exercise thereof in accordance with the terms of such Stock Awards, if applicable) for each share of Common Stock underlying each such Stock Award such cash, securities or other property that would have been received by the applicable Participant had such Participant exercised such Stock Award immediately prior to the effective time of the Corporate Transaction.

(b) In the event that, in connection with a Corporate Transaction, any surviving corporation or acquiring corporation does not assume or continue any or all such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted, such Stock Awards shall terminate if not exercised (if applicable) at or prior to the effective time of such Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Stock Awards held by Participants whose Continuous Service has not terminated shall (contingent upon the effectiveness of the Corporate Transaction) lapse.

**10.4 Change in Control.** A Stock Award held by any Participant whose Continuous Service has not terminated prior to the effective time of a Change in Control may be subject to additional acceleration of vesting and exercisability upon or after such Change in Control as may be provided in the Stock Award Agreement for such Stock Award; *provided, however,* that in the absence of any such provision in the Stock Award Agreement for such Stock Award, no such acceleration shall occur.

## 11. TERMINATION, SUSPENSION AND AMENDMENT.

**11.1 Termination or Suspension of the Plan.** The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on the day before the tenth (10<sup>th</sup>) anniversary of the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**11.2 Amendment of the Plan and Stock Awards.** Subject to Section 11.3 below, the Board may, from time to time, amend the Plan or any Stock Award in any manner it deems appropriate or necessary. Notwithstanding the foregoing, except as expressly provided elsewhere in the Plan, no amendment to the Plan shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Section 422 of the Code.

**11.3 No Impairment.** No termination or suspension of the Plan or amendment of the Plan or any Stock Award shall impair rights of a Participant with respect to any outstanding Stock Award unless the Company receives the written consent of such Participant.

**12. MISCELLANEOUS.**

**12.1 Compliance with Laws.**

(a) This Plan and the obligations of the Company with respect to any Stock Awards granted hereunder shall be subject to all applicable federal and state securities laws. If, after reasonable efforts, the Company is unable to obtain from any applicable regulatory commission or agency the authority that legal counsel for the Company deems necessary for the lawful issuance and sale of Common Stock pursuant to such Stock Awards, then the Company shall be relieved from any liability for failure to issue and sell Common Stock in connection with such Stock Awards unless and until such authority is obtained.

(b) To facilitate the grant of any Stock Award, the Committee may impose special terms for Stock Awards granted to Participants who are foreign nationals or who are employed by the Company or any Affiliate outside of the United States as the Board or Committee may consider necessary or appropriate to accommodate differences in local laws, tax policies or customs.

**12.2 Severability.** If one or more provisions of this Plan are held to be unenforceable under applicable law, such provision shall be excluded from this Plan and the balance of the Plan shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**12.3 Governing Law.** The law of the State of California shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.

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**APPENDIX A**

**DEFINITIONS**

**Affiliate** means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

**Board** means the Board of Directors of the Company.

**Cause** means, with respect to a particular Participant, the occurrence of any of the following: (i) such Participant's conviction of any felony or any crime involving fraud; (ii) such Participant's participation (whether by affirmative act or omission) in a fraud or felonious act against the Company and/or its Affiliates; (iii) such Participant's violation of any statutory or fiduciary duty, or duty of loyalty owed to the Company and/or its Affiliates and which has a material adverse effect on the Company and/or its Affiliates; (iv) such Participant's violation of state or federal law in connection with such Participant's performance of such Participant's job; (v) breach of any material term of any contract between such Participant and the Company and/or its Affiliates; and (vi) such Participant's violation of any material Company policy; *provided, however*, that the final determination that a termination is for Cause shall be made by the Board or Committee, as applicable, in its sole and exclusive judgment and discretion.

**CCR Title 10** means Title 10 of the California Code of Regulations, as amended from time to time.

**Change in Control** means any Corporate Transaction or the occurrence, in any single transaction or in any series of related transactions not approved by the Board, of any Person becoming the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then-outstanding securities; *provided, however*, that notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement (it being understood, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply).

**Code** means the Internal Revenue Code of 1986, as amended.

**Committee** means a committee of one (1) or more members of the Board appointed by the Board in accordance with Section 3.2 of the Plan.

**Common Stock** means the Company's common stock, par value \$0.001 per share.

**Company** means IT&E International Group, a Delaware corporation.

**Consultant** means any person, including an advisor, engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services; *provided, however*, that the term Consultant shall not include Directors who are not compensated by the Company for their services as Directors, and the payment of a fee by the Company for services which the Board determines in its sole discretion are services as a Director shall not cause a Director to be considered a Consultant for purposes of the Plan.

**Continuous Service** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with

the Company or an Affiliate, shall not terminate a Participant's Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate, or to a Director shall not constitute an interruption of Continuous Service. The Board, Committee or any authorized Officer of the Company, in that party's sole discretion, may

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determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy or in the written terms of the Participant's leave of absence.

**Corporate Transaction** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

- (a) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company if, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either: (i) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction; or (ii) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction;
- (b) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur; or
- (c) there is consummated a sale of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity more than fifty percent (50%) of the combined voting power of the voting securities of which Entity is Owned by stockholders of the Company in substantially the same proportion as their Ownership of the Company immediately prior to such sale.

The term **Corporate Transaction** shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

**Director** means a member of the Board.

**Disability** means the inability of a person, in the opinion of a qualified physician acceptable to the Company, to perform the duties of that person's position with the Company or an Affiliate because of the sickness or injury of the person.

**Employee** means any person employed by the Company or an Affiliate; *provided, however*, that service as a Director, or payment of a fee by the Company for services which the Board determines in its sole discretion are services as a Director or as a member of the Board of Directors of an Affiliate, shall not be sufficient to constitute employment by the Company or such Affiliate.

**Entity** means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

**Fair Market Value** means, as of any date, the value of the Common Stock determined by the Board in good faith and in a manner consistent with CCR Title 10.

**Incentive Stock Option** means an option to purchase shares of Common Stock that is intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

*Nonstatutory Stock Option* means an option to purchase shares of Common Stock that is not intended to qualify as an Incentive Stock Option.

*Officer* means any person designated by the Company as an officer.

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**Option** means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

A Person shall be deemed to **Own**, to have **Owned**, to be the **Owner** of, or to have acquired **Ownership** of securities if such Person, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**Participant** means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

**Person** means any natural person or Entity.

**Plan** means this IT&E International Group 2005 Equity Incentive Plan.

**Restricted Stock Award** means an award of shares of Common Stock, which is granted pursuant to the terms and conditions of Section 9 of the Plan.

**Securities Act** means the Securities Act of 1933, as amended.

**Stock Award** means any right granted under the Plan, including an Option, a Restricted Stock Award or a stock bonus.

**Stock Award Agreement** means a written agreement between the Company and a Participant evidencing the terms and conditions of an individual Stock Award. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

**Ten Percent Stockholder** means a person who 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.

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## Appendix H

### IT&E INTERNATIONAL GROUP

#### AUDIT COMMITTEE CHARTER

##### A. *Authority.*

The Board of Directors (the *Board*) of IT&E International Group, a Nevada corporation (the *Company*) has established the Audit Committee (the *Committee*) with oversight responsibilities as described in this Charter or as additionally requested by the Board.

The Committee shall review and assess the adequacy of this Charter annually and recommend any proposed changes to the Board for approval. Additionally, the Committee is empowered to retain persons having special competence as necessary to assist the Committee in fulfilling its responsibilities with concurrence of the Board.

##### B. *Purpose.*

The primary function of the Committee is to assist the Board in fulfilling its oversight responsibilities related to corporate accounting, financial reporting practices, quality and integrity of financial reports, and legal compliance and business ethics, including, without limitation, assisting the Board in its oversight of: (i) the integrity of the Company's financial statements; (ii) the Company's compliance with legal and regulatory requirements; (iii) the independent auditor's qualifications and independence; (iv) the performance of the Company's internal audit function and independent auditor; (v) conflicts of interest of the Company's directors and executive officers and the disclosure of any waivers of such conflicts; and (vi) the Compliance and ethics programs established from time to time by management and the Board.

The Committee, in fulfilling this function, will focus on meeting the following goals: (i) facilitating and maintaining open communication among the Board, the Committee, senior management, the independent external auditor, and the internal audit staff; (ii) serving as an independent and objective party to monitor the Company's financial reporting process and internal control system; (iii) reviewing and appraising the efforts of the external independent auditor; and (iv) providing direction to and oversight of the internal audit committee and its staff.

##### C. *Membership.*

The members of the Committee shall be appointed annually by the Board. The Committee will consist of two (2) or more directors, each with no management responsibilities or business relationships with the Company or its affiliates as more thoroughly discussed below. Unless a chair is elected by the Board, the members of the Committee may designate a chair (the *Chair*) by majority vote of the Committee membership.

All Committee members will be free from any financial, family or other material personal relationship that, in the opinion of the Board or the other Committee members, would interfere with the exercise of his or her independence from the Company and the Company's management. In evaluating the Committee members' independence, the individuals must not have been, for at least the past three (3) years, employees of the Company or its external auditor, employees of a company with compensation committee interlocks with the Company or immediate family members of such employees. Additionally, no member of the Committee may receive any consulting or other fees (other than fees for serving on the Board or a committee of the Board) from the Company or serve as a member of the audit committee of more than two (2) other public companies.

All members of the Committee must be financially literate, as determined by the Board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the Committee. The Board, in its business judgment, shall make determinations of

financial literacy on a case-by-case basis. In addition, at least one (1) member of the Committee must be a financial expert, as such term is defined in the rules and regulations of the SEC, and shall have had accounting or related financial management expertise as interpreted in the business judgment of the Board.

*D. Term of Office.*

The members of the Committee shall be appointed by the Board annually, or as necessary to fill vacancies. Each member shall serve until his or her successor is duly elected and qualified or until such member's earlier resignation or removal. Any member of the Committee may be removed, with or without cause, by a majority vote of the Board.

*E. Meetings.*

The Committee will meet at least four (4) times annually, or more frequently as circumstances dictate. If necessary, meetings may be conducted telephonically. The Committee may request any officer or employee of the Company or the Company's outside counsel or independent auditor to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee.

As part of its job to foster open communication, the Committee shall meet at least annually with management, the Company's Internal Auditor (the Internal Auditor) and the independent auditor (the Independent Auditor) in separate executive sessions to discuss any matters that the Committee or each of these groups believe should be discussed privately. In addition, either the Committee or its Chair shall meet with the Independent Auditor and management quarterly to review the Company's financials consistent with Section F below.

*F. Responsibilities of the Audit Committee.*

In furtherance of its purpose, the Committee shall, at a minimum, take the actions enumerated below and shall have the authority provided for in this Section F and elsewhere in this Charter.

*Independent Auditor*

1. The Committee, subject to any action that may be taken by the Board, will have ultimate authority and responsibility to select (or nominate for stockholder approval), evaluate and, where appropriate, replace the Independent Auditor.
2. The Committee will: (i) review the annual written report from the Independent Auditor discussing all relationships between the Independent Auditor and the Company in accordance with Independence Standards Board Standards No. 1 ( ISB 1 ) as in effect at that time; (ii) establish a written pre-approval policy and monitor and pre-approve all fees paid to the Independent Auditor for audit as well as non-audit services; (iii) discuss with the Independent Auditor any such disclosed relationships and their impact on the Independent Auditor's objectivity or independence; and (iv) take appropriate action in response to the Independent Auditor's report to satisfy itself of the auditor's independence.
3. The Committee will review the annual audit plan of the Independent Auditor and its scope and obtain and review a report by the independent auditor describing any material issues raised by any inquiry or investigation by governmental or professional authorities regarding an audit by the Independent Auditor.
4. The Committee shall serve as the Board's primary avenue of communication with the Independent Auditor.
5. The Committee shall ensure understanding by the Independent Auditor and management that the Independent Auditor reports to and is ultimately accountable to the Committee. The



Committee shall resolve disagreements between management and the Independent Auditor regarding financial reporting.

6. The Committee shall provide the opportunity for the Independent Auditor to meet with the Board as deemed necessary and appropriate by the Committee.

7. The Committee shall be responsible for the establishment of policies for the Company's hiring of employees or former employees of the Independent Auditor and procedures to receive, retain and address complaints regarding accounting, internal accounting controls and auditing matters, including procedures for employees' anonymous submissions of concerns.

*Internal Auditors*

8. The Committee shall serve as the Board's primary avenue of communication with the Internal Auditor.

9. The Committee shall review and concur in the appointment, replacement, reassignment or dismissal of the Internal Auditor.

10. The Committee shall confirm and assure the independence of the Internal Auditor.

11. The Committee shall review the annual internal audit plan of the Internal Auditor and its scope, and the degree of coordination of this plan with the Independent Auditor.

12. The Committee shall review periodically the internal audit activities, staffing and budget.

*Financial Statements*

13. The Committee shall inquire of the Independent Auditor and management as to the acceptability and appropriateness of financial accounting practices and disclosures used or proposed by the Company.

14. The Committee shall review and discuss with management and the Independent Auditor prior to releasing the year-end earnings and at the completion of the annual audit examination:

- the Company's financial statements and related financial disclosures, including the Management Discussion and Analysis of Financial Condition and Results of Operations;
- the Independent Auditor's audit of the financial statements and its report;
- any significant changes in the audit plan;
- any disputes or difficulties with management encountered during the course of the audit; and
- any other matters required to be disclosed.

15. The Committee will review and discuss with management and the Independent Auditor the audited financial statements to be included in the Company's Annual Report on Form 10-SB and review and consider with the Independent Auditor the matters required to be discussed by Statement of Auditing Standards No. 61 (SAS 61) as in effect at the time.

16. Prior to the Company releasing its quarterly earnings, either the Committee or the Chair will review and discuss with management and the Independent Auditor the Company's quarterly financial statements to be included in the Company's Quarterly Reports on Form 10-SB and review with the Independent Auditor the matters required to be discussed by SAS 61 in effect at the time.

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*Internal Control Environment*

17. The Committee shall, at least annually, consider and review with the Independent Auditor, the Internal Auditor and other members of management:

- the adequacy of the Company's internal controls; and
- any significant findings and recommendations of the Independent Auditor or the Internal Auditor, together with management's proposed responsive actions.

18. The Committee shall annually review its own performance.

*Reporting Procedures*

19. The Committee shall report its activities to the Board on a regular basis and make recommendations to the Board with respect to matters within the purview of the Committee, as necessary or appropriate.

20. The Committee will prepare a report each year for inclusion in the Company's annual proxy statement stating whether (i) the Committee's reviewed and discussed audited financial statements with management, (ii) the Committee discussed with the Independent Auditor the matters required to be discussed by SAS 61, (iii) the Committee received the written disclosures from the auditor required by ISB 1, and (iv) the Committee recommended to the Board that the audited financial statements be included in the Company's Annual Report on Form 10-SB.

21. The Committee shall maintain minutes or other records of meetings and activities of the Committee.

*Access and Communication*

22. The Committee shall meet separately and privately with the Independent Auditor, the Internal Auditor and with the Company's Chief Financial Officer and accounting officers to ascertain if any restrictions have been placed on the scope of their activities, and to discuss any other matters the Committee or each of these groups believe should be discussed privately with the Committee.

23. The Committee shall have free and open lines of communication with the Independent Auditor and the Internal Auditor, as well as prompt and unrestricted access to management and all relevant information.

24. Financial management will advise the Committee on a timely basis if and when it seeks a second opinion on significant accounting issues or has a disagreement with the Independent Auditor which would require public reporting in the event of an auditor change.

*Advisors*

25. The Committee shall have authority to engage outside legal, accounting and other advisors with Board approval.

*Earnings and Releases*

26. The Committee shall review the Company's earnings press releases and financial information and earnings guidance provided by the Company to stockholders, analysts and rating agencies.



*Risk Assessment and Management*

27. The Committee shall review and discuss with management and the Independent Auditor compliance with laws, regulations and internal procedures and contingent liabilities and discuss policies with respect to risk assessment and risk management.

*Ethical and Legal Compliance*

28. The Committee shall review, monitor and, as needed, update periodically the Company's Code of Business Conduct and Ethics.

29. The Committee shall ensure that management has the proper review system in place to ensure that the Company's financial statements, reports and other financial information disseminated to governmental organizations and the public satisfy legal requirements.

30. The Committee shall review, with the Company's counsel, legal compliance matters including corporate securities trading policies.

31. The Committee shall review, with the Company's counsel, any legal matter that could have a significant impact on the Company's financial statements.

While the Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. This is the responsibility of management and the Independent Auditor.

**G. *Delegation to Subcommittees.***

The Committee shall have the authority to delegate any of its responsibilities to a subcommittee of the Committee.

**H. *Studies and Investigations.***

The Committee shall have the power and authority to conduct or authorize studies and investigations into any matter of interest or concern within the scope of its responsibilities that the Committee deems appropriate, and shall have the authority to retain independent counsel, compensation consultants, accountants or other experts to assist in the conduct of any such study or investigation, including the authority to approve fees payable to such experts and any other terms of retention.

**I. *Annual Performance Evaluation.***

The Committee shall perform a review and evaluation, at least annually, of the performance of the Committee, including reviewing the compliance of the Committee with this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend to the Board any improvements to this Charter that the Committee considers necessary or appropriate. The Committee shall conduct such evaluations and reviews in such manner as it deems appropriate.

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**EXHIBIT A**  
**AUDIT COMMITTEE EXPECTATIONS**

**TO BE CLARIFIED ANNUALLY**

1. The Independent Auditor understands its client is the Board, as the stockholders representative.
2. Financial management and the Independent Auditor will perform a timely analysis of significant financial reporting issues and practices.
3. Financial management and the Independent Auditor will discuss with the Committee their qualitative judgments about the appropriateness, not just the acceptability, of accounting principles and financial disclosure practices used or proposed to be adopted by the Company and, particularly, about the degree of aggressiveness or conservatism of its accounting principles and underlying estimates.
4. The Committee will discuss with the Independent Auditor all significant relationships the auditor has with the Company to determine the auditor's independence. The Committee will evaluate the external auditor's qualifications, performance and independence. To assist in this function the Committee will obtain from the Independent Auditor an annual report describing the at least the following:
  - a. the Independent Auditor's internal quality control procedures;
  - b. any material issues raised by the most recent internal quality-control review, or peer review of the Internal Auditor or any inquiry or investigation by governmental or professional authorities, within the preceding five years, relating to an audit, and the steps taken to deal with any such issues; and
  - c. all relationships between the Independent Auditor and the Company.
5. The independent auditor will, in collaboration with the Company's Internal Auditor, develop a plan regarding the coordination of their audit procedures to promote an effective use of resources and ensure a complete and non-redundant audit, and the Independent Auditor will submit such plan to the Committee for review.
6. The Independent Auditor shall provide to and discuss with the Committee periodic reports relating to:
  - a. all critical accounting policies and practices to be used;
  - b. alternative treatments within GAAP discussed with management, the effect of using or not using such treatments and the Independent Auditor's preferred treatment;
  - c. any management letter, schedule of unadjusted differences or other material written communications with management;
  - d. any audit problems or difficulties encountered in the course of the audit work, including any restrictions on the scope of the Independent Auditor's activities or on access to requested information, any significant disagreements with management and management's response to all such difficulties;
  - e. analyses prepared by management and/or the Independent Auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements;

f. the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on financial statements of the Company; and

g. earnings press releases (paying particular attention to any use of pro forma or adjusted non-GAAP information) and financial information and earnings guidance provided to stockholders, analysts and rating agencies.

7. The Independent Auditor will discuss with the Committee, management and the Internal Auditor risk assessments and risk management.

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**EXHIBIT B**  
**AUDIT COMMITTEE**

**DISCUSSION TOPICS WITH THE INDEPENDENT AUDITOR**

**1. Accounting Principles and Disclosures**

- a. The auditor's independent qualitative judgments about the appropriateness, not just the acceptability, of the accounting principles and the clarity of the financial disclosure practices used or proposed to be adopted by the Company.
- b. The auditor's views about whether management's choices of accounting principles are conservative, moderate, or extreme from the perspective of income, asset, and liability recognition, and whether those principles are common practices or are minority practices.
- c. The auditor's reasoning in determining the appropriateness of changes in accounting principles and disclosure practices.
- d. The auditor's reasoning in determining the appropriateness of changes in accounting principles and disclosure practices adopted by management for new transactions or events.
- e. The auditor's reasoning in accepting or questioning significant estimates made by management.
- f. The auditor's views about how the Company's choices of accounting principles and disclosure practices may affect stockholders and public views and attitudes about the Company.
- g. The auditor's report to the Committee of any significant changes in the independent auditor's original audit plan.
- h. The auditor's interim financial review prior to the Company's filing of each quarterly report to stockholders (Form 10-SB).
- i. The auditor's views about the fullness and accuracy of the Company's financial statements.

**2. Internal Control System Matters**

- a. Independent auditor's recommendations.
- b. Management's response and resulting actions.
- c. Discussion of specific matters as requested or appropriate.

**3. Audit Scope and Audit Independence**

- a. Adequacy of the independent auditor's scope, approach and reports.
- b. The nature and extent of advisory services provided by the audit firm and consideration of any impact on auditor independence.

c. Unusual pressures or other matters which could impair auditor independence.

**4. Other Matters as Appropriate**

a. Meet with the independent auditor in executive session without the participation of senior management, as necessary, to foster open communication.

b. Meet with Company's legal counsel to review any legal matters that may have a significant impact on the Company's overall financial status.

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**Appendix I**

**SECTIONS 92A.300-92A.500 OF NRS**

**NRS 92A.300 Definitions.** As used in NRS 92A.300 to 92A.500, inclusive, unless the context otherwise requires, the words and terms defined in NRS 92A.305 to 92A.335, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2086)

**NRS 92A.305 Beneficial shareholder defined.** Beneficial shareholder means a person who is a beneficial owner of shares held in a voting trust or by a nominee as the shareholder of record.

(Added to NRS by 1995, 2087)

**NRS 92A.310 Corporate action defined.** Corporate action means the action of a domestic corporation.

(Added to NRS by 1995, 2087)

**NRS 92A.315 Dissenter defined.** Dissenter means a shareholder who is entitled to dissent from a domestic corporation's action under NRS 92A.380 and who exercises that right when and in the manner required by NRS 92A.400 to 92A.480, inclusive.

(Added to NRS by 1995, 2087; A 1999, 1631)

**NRS 92A.320 Fair value defined.** Fair value, with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which he objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(Added to NRS by 1995, 2087)

**NRS 92A.325 Shareholder defined.** Shareholder means a shareholder of record or a beneficial shareholder of a domestic corporation.

(Added to NRS by 1995, 2087)

**NRS 92A.330 Shareholder of record defined.** Shareholder of record means the person in whose name shares are registered in the records of a domestic corporation or the beneficial owner of shares to the extent of the rights granted by a nominee's certificate on file with the domestic corporation.

(Added to NRS by 1995, 2087)

**NRS 92A.335 Subject corporation defined.** Subject corporation means the domestic corporation which is the issuer of the shares held by a dissenter before the corporate action creating the dissenter's rights becomes effective or the surviving or acquiring entity of that issuer after the corporate action becomes effective.

(Added to NRS by 1995, 2087)

**NRS 92A.340 Computation of interest.** Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the average rate currently paid by the entity on its principal bank loans or, if it has no bank loans, at a rate that is fair and equitable under all of the circumstances.

(Added to NRS by 1995, 2087)

**NRS 92A.350 Rights of dissenting partner of domestic limited partnership.** A partnership agreement of a domestic limited partnership or, unless otherwise provided in the partnership agreement,

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an agreement of merger or exchange, may provide that contractual rights with respect to the partnership interest of a dissenting general or limited partner of a domestic limited partnership are available for any class or group of partnership interests in connection with any merger or exchange in which the domestic limited partnership is a constituent entity.

(Added to NRS by 1995, 2088)

**NRS 92A.360 Rights of dissenting member of domestic limited-liability company.** The articles of organization or operating agreement of a domestic limited-liability company or, unless otherwise provided in the articles of organization or operating agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the interest of a dissenting member are available in connection with any merger or exchange in which the domestic limited-liability company is a constituent entity.

(Added to NRS by 1995, 2088)

**NRS 92A.370 Rights of dissenting member of domestic nonprofit corporation.**

1. Except as otherwise provided in subsection 2, and unless otherwise provided in the articles or bylaws, any member of any constituent domestic nonprofit corporation who voted against the merger may, without prior notice, but within 30 days after the effective date of the merger, resign from membership and is thereby excused from all contractual obligations to the constituent or surviving corporations which did not occur before his resignation and is thereby entitled to those rights, if any, which would have existed if there had been no merger and the membership had been terminated or the member had been expelled.

2. Unless otherwise provided in its articles of incorporation or bylaws, no member of a domestic nonprofit corporation, including, but not limited to, a cooperative corporation, which supplies services described in chapter 704 of NRS to its members only, and no person who is a member of a domestic nonprofit corporation as a condition of or by reason of the ownership of an interest in real property, may resign and dissent pursuant to subsection 1.

(Added to NRS by 1995, 2088)

**NRS 92A.380 Right of shareholder to dissent from certain corporate actions and to obtain payment for shares.**

1. Except as otherwise provided in NRS 92A.370 and 92A.390, any shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(a) Consummation of a conversion or plan of merger to which the domestic corporation is a constituent entity:

(1) If approval by the shareholders is required for the conversion or merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of whether the shareholder is entitled to vote on the conversion or plan of merger; or

(2) If the domestic corporation is a subsidiary and is merged with its parent pursuant to NRS 92A.180.

(b) Consummation of a plan of exchange to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be acquired, if his shares are to be acquired in the plan of exchange.

(c) Any corporate action taken pursuant to a vote of the shareholders to the extent that the articles of incorporation, bylaws or a resolution of the Board of Directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

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2. A shareholder who is entitled to dissent and obtain payment pursuant to NRS 92A.300 to 92A.500, inclusive, may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to him or the domestic corporation.

(Added to NRS by 1995, 2087; A 2001, 1414, 3199; 2003, 3189)

**NRS 92A.390 Limitations on right of dissent: Shareholders of certain classes or series; action of shareholders not required for plan of merger.**

1. There is no right of dissent with respect to a plan of merger or exchange in favor of shareholders of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or exchange is to be acted on, were either listed on a national securities exchange, included in the national market system by the National Association of Securities Dealers, Inc., or held by at least 2,000 shareholders of record, unless:

(a) The articles of incorporation of the corporation issuing the shares provide otherwise; or

(b) The holders of the class or series are required under the plan of merger or exchange to accept for the shares anything except:

(1) Cash, owner's interests or owner's interests and cash in lieu of fractional owner's interests of:

(I) The surviving or acquiring entity; or

(II) Any other entity which, at the effective date of the plan of merger or exchange, were either listed on a national securities exchange, included in the national market system by the National Association of Securities Dealers, Inc., or held of record by at least 2,000 holders of owner's interests of record; or

(2) A combination of cash and owner's interests of the kind described in sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b).

2. There is no right of dissent for any holders of stock of the surviving domestic corporation if the plan of merger does not require action of the shareholders of the surviving domestic corporation under NRS 92A.130.

(Added to NRS by 1995, 2088)

**NRS 92A.400 Limitations on right of dissent: Assertion as to portions only to shares registered to shareholder; assertion by beneficial shareholder.**

1. A shareholder of record may assert dissenter's rights as to fewer than all of the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the subject corporation in writing of the name and address of each person on whose behalf he asserts dissenter's rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

2. A beneficial shareholder may assert dissenter's rights as to shares held on his behalf only if:

(a) He submits to the subject corporation the written consent of the shareholder of record to the dissent not later than the time the beneficial shareholder asserts dissenter's rights; and

(b) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

(Added to NRS by 1995, 2089)

**NRS 92A.410 Notification of shareholders regarding right of dissent.**

1. If a proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, the notice of the meeting must state that shareholders are or may be entitled to assert dissenters' rights under NRS 92A.300 to 92A.500, inclusive, and be accompanied by a copy of those sections.
2. If the corporate action creating dissenters' rights is taken by written consent of the shareholders or without a vote of the shareholders, the domestic corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenter's notice described in NRS 92A.430.

(Added to NRS by 1995, 2089; A 1997, 730)

**NRS 92A.420 Prerequisites to demand for payment for shares.**

1. If a proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenter's rights:
  - (a) Must deliver to the subject corporation, before the vote is taken, written notice of his intent to demand payment for his shares if the proposed action is effectuated; and
  - (b) Must not vote his shares in favor of the proposed action.
2. A shareholder who does not satisfy the requirements of subsection 1 and NRS 92A.400 is not entitled to payment for his shares under this chapter.

(Added to NRS by 1995, 2089; 1999, 1631)

**NRS 92A.430 Dissenter's notice: Delivery to shareholders entitled to assert rights; contents.**

1. If a proposed corporate action creating dissenters' rights is authorized at a shareholders' meeting, the subject corporation shall deliver a written dissenter's notice to all shareholders who satisfied the requirements to assert those rights.
2. The dissenter's notice must be sent no later than 10 days after the effectuation of the corporate action, and must:
  - (a) State where the demand for payment must be sent and where and when certificates, if any, for shares must be deposited;
  - (b) Inform the holders of shares not represented by certificates to what extent the transfer of the shares will be restricted after the demand for payment is received;
  - (c) Supply a form for demanding payment that includes the date of the first announcement to the news media or to the shareholders of the terms of the proposed action and requires that the person asserting dissenter's rights certify whether or not he acquired beneficial ownership of the shares before that date;
  - (d) Set a date by which the subject corporation must receive the demand for payment, which may not be less than 30 nor more than 60 days after the date the notice is delivered; and
  - (e) Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive.

(Added to NRS by 1995, 2089)

**NRS 92A.440 Demand for payment and deposit of certificates; retention of rights of shareholder.**

1. A shareholder to whom a dissenter's notice is sent must:
  - (a) Demand payment;

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(b) Certify whether he or the beneficial owner on whose behalf he is dissenting, as the case may be, acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice for this certification; and

(c) Deposit his certificates, if any, in accordance with the terms of the notice.

2. The shareholder who demands payment and deposits his certificates, if any, before the proposed corporate action is taken retains all other rights of a shareholder until those rights are cancelled or modified by the taking of the proposed corporate action.

3. The shareholder who does not demand payment or deposit his certificates where required, each by the date set forth in the dissenter's notice, is not entitled to payment for his shares under this chapter.

(Added to NRS by 1995, 2090; A 1997, 730; 2003, 3189)

**NRS 92A.450 Uncertificated shares: Authority to restrict transfer after demand for payment; retention of rights of shareholder.**

1. The subject corporation may restrict the transfer of shares not represented by a certificate from the date the demand for their payment is received.

2. The person for whom dissenter's rights are asserted as to shares not represented by a certificate retains all other rights of a shareholder until those rights are cancelled or modified by the taking of the proposed corporate action.

(Added to NRS by 1995, 2090)

**NRS 92A.460 Payment for shares: General requirements.**

1. Except as otherwise provided in NRS 92A.470, within 30 days after receipt of a demand for payment, the subject corporation shall pay each dissenter who complied with NRS 92A.440 the amount the subject corporation estimates to be the fair value of his shares, plus accrued interest. The obligation of the subject corporation under this subsection may be enforced by the district court:

(a) Of the county where the corporation's registered office is located; or

(b) At the election of any dissenter residing or having its registered office in this state, of the county where the dissenter resides or has its registered office. The court shall dispose of the complaint promptly.

2. The payment must be accompanied by:

(a) The subject corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, a statement of income for that year, a statement of changes in the shareholders' equity for that year and the latest available interim financial statements, if any;

(b) A statement of the subject corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's rights to demand payment under NRS 92A.480; and

(e) A copy of NRS 92A.300 to 92A.500, inclusive.

(Added to NRS by 1995, 2090)

**NRS 92A.470 Payment for shares: Shares acquired on or after date of dissenter's notice.**

1. A subject corporation may elect to withhold payment from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenter's notice as the date of the first announcement to the news media or to the shareholders of the terms of the proposed action.

2. To the extent the subject corporation elects to withhold payment, after taking the proposed action, it shall estimate the fair value of the shares, plus accrued interest, and shall offer to pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The subject corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment pursuant to NRS 92A.480.

(Added to NRS by 1995, 2091)

**NRS 92A.480 Dissenter's estimate of fair value: Notification of subject corporation; demand for payment of estimate.**

1. A dissenter may notify the subject corporation in writing of his own estimate of the fair value of his shares and the amount of interest due, and demand payment of his estimate, less any payment pursuant to NRS 92A.460, or reject the offer pursuant to NRS 92A.470 and demand payment of the fair value of his shares and interest due, if he believes that the amount paid pursuant to NRS 92A.460 or offered pursuant to NRS 92A.470 is less than the fair value of his shares or that the interest due is incorrectly calculated.

2. A dissenter waives his right to demand payment pursuant to this section unless he notifies the subject corporation of his demand in writing within 30 days after the subject corporation made or offered payment for his shares.

(Added to NRS by 1995, 2091)

**NRS 92A.490 Legal proceeding to determine fair value: Duties of subject corporation; powers of court; rights of dissenter.**

1. If a demand for payment remains unsettled, the subject corporation shall commence a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the subject corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

2. A subject corporation shall commence the proceeding in the district court of the county where its registered office is located. If the subject corporation is a foreign entity without a resident agent in the state, it shall commence the proceeding in the county where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign entity was located.

3. The subject corporation shall make all dissenters, whether or not residents of Nevada, whose demands remain unsettled, parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter who is made a party to the proceeding is entitled to a judgment:
  - (a) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the subject corporation; or
  - (b) For the fair value, plus accrued interest, of his after-acquired shares for which the subject corporation elected to withhold payment pursuant to NRS 92A.470.

(Added to NRS by 1995, 2091)

**NRS 92A.500 Legal proceeding to determine fair value: Assessment of costs and fees.**

1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment.
2. The court may also assess the fees and expenses of the counsel and experts for the respective parties, in amounts the court finds equitable:
  - (a) Against the subject corporation and in favor of all dissenters if the court finds the subject corporation did not substantially comply with the requirements of NRS 92A.300 to 92A.500, inclusive; or
  - (b) Against either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.
3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the subject corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.
4. In a proceeding commenced pursuant to NRS 92A.460, the court may assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.
5. This section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of N.R.C.P. 68 or NRS 17.115.

(Added to NRS by 1995, 2092)

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