

ASPEN TECHNOLOGY INC /DE/  
Form 10-Q  
November 09, 2009

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 31, 2009

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number: 000-24786

**Aspen Technology, Inc.**

(Exact name of registrant as specified in its charter)

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

**04-2739697**  
(I.R.S. Employer  
Identification No.)

**200 Wheeler Road**  
**Burlington, Massachusetts**  
(Address of Principal Executive Offices)

**01803**  
(Zip Code)

**(781) 221-6400**  
(Registrant's telephone number, including area code)

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

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

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

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller reporting company

(Do not check if a smaller reporting company)

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

As of October 18, 2009, there were 90,115,300 shares of the registrant's common stock (par value \$0.10 per share) outstanding.

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Table of Contents**PART I. FINANCIAL INFORMATION****Item 1. Condensed Consolidated Financial Statements (unaudited)****ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(Unaudited and in thousands, except per share data)**

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2009	2008	2009	2008
<b>Revenues:</b>				
Software licenses	\$ 41,070	\$ 40,018	\$ 137,979	\$ 108,716
Service and other	30,222	34,226	102,346	104,585
Total revenues	71,292	74,244	240,325	213,301
<b>Cost of revenues:</b>				
Cost of software licenses	3,063	4,034	8,562	11,241
Cost of service and other	15,333	17,416	47,139	51,824
Amortization of technology-related intangible assets			25	
Total cost of revenues	18,396	21,450	55,726	63,065
Gross profit	52,896	52,794	184,599	150,236
<b>Operating costs:</b>				
Selling and marketing	21,632	25,362	66,172	70,946
Research and development	10,548	11,592	31,287	33,853
General and administrative	14,493	13,844	42,884	39,333
Restructuring charges	1,760	111	2,025	8,628
Loss (gain) on sales and disposals of assets		13	3	(87)
Loss on impairment of goodwill and intangible assets			623	
Total operating costs	48,433	50,922	142,994	152,673
Income (loss) from operations	4,463	1,872	41,605	(2,437)
Interest income	5,176	6,136	17,046	18,082
Interest expense	(2,230)	(4,510)	(7,827)	(13,738)
Other (expense) income, net	(3,308)	2,653	(3,969)	4,846
Income before provision for taxes	4,101	6,151	46,855	6,753
Benefit from (provision for) income taxes	3,995	(2,118)	(4,145)	(2,465)
Net income	\$ 8,096	\$ 4,033	\$ 42,710	\$ 4,288

**Earnings per common share:**

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Basic	\$	0.09	\$	0.04	\$	0.47	\$	0.05
Diluted	\$	0.09	\$	0.04	\$	0.46	\$	0.05
<b>Weighted average shares outstanding:</b>								
Basic		90,065		89,972		90,042		89,522
Diluted		91,648		93,834		92,620		93,865

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

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## CONDENSED CONSOLIDATED BALANCE SHEETS

(Unaudited and in thousands, except share data)

	March 31, 2009	June 30, 2008
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 126,257	\$ 134,048
Accounts receivable, net	46,070	86,870
Current portion of installments receivable, net	52,967	51,762
Current portion of collateralized receivables, net	42,548	43,186
Unbilled services	2,658	3,459
Prepaid expenses and other current assets	23,876	11,710
Deferred tax assets	1,802	2,305
 Total current assets	 296,178	 333,340
Non-current installments receivable, net	109,573	82,528
Non-current collateralized receivables, net	67,427	92,163
Property, equipment and leasehold improvements, net	9,562	11,799
Computer software development costs	4,403	5,443
Other intangible assets, net	172	615
Goodwill	15,665	19,019
Non-current deferred tax assets	6,746	7,743
Other non-current assets	1,875	1,976
	 \$ 511,601	 \$ 554,626
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of secured borrowing	\$ 91,119	\$ 47,816
Accounts payable	4,986	6,586
Accrued expenses	40,458	61,746
Income taxes payable	7,897	13,877
Deferred revenue	61,402	86,551
Current deferred tax liability	451	457
 Total current liabilities	 206,313	 217,033
Long-term secured borrowing	31,352	99,391
Deferred revenue	21,442	20,354
Non-current deferred tax liability	637	725
Other non-current liabilities	34,698	44,310
Commitments and contingencies (Note 8)		
Series D redeemable convertible preferred stock, \$0.10 par value		
Authorized	3,636 shares as of March 31, 2009 and June 30, 2008	
Issued and outstanding	none as of March 31, 2009 and June 30, 2008	
Stockholders' equity:		
Common stock, \$0.10 par value Authorized 120,000,000 shares		
Issued	90,305,805 shares as of March 31, 2009 and 90,235,526 shares at June 30, 2008	
Outstanding	90,072,341 shares at March 31, 2009 and 90,002,062 shares at June 30, 2008	
Additional paid-in capital	496,567	493,088
Accumulated deficit	(293,807)	(336,517)
Accumulated other comprehensive income	5,881	7,731

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Treasury stock, at cost 233,464 shares of common stock as of March 31, 2009 and June 30, 2008 (513) (513)

Total stockholders' equity	217,159	172,813
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\$ 511,601 \$ 554,626

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

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited and in thousands)

	Nine Months Ended March 31,	
	2009	2008
Cash flows from operating activities:		
Net income	\$ 42,710	\$ 4,288
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation and amortization	6,574	8,337
Net foreign currency loss (gain)	5,200	(3,502)
Stock-based compensation	3,659	8,370
Non-cash interest expense from amortization of debt issuance costs		960
Loss on disposal of property, equipment and leasehold improvements	406	
Deferred income taxes	1,351	(2,607)
Provision for doubtful accounts	885	(32)
Loss on impairment of goodwill and intangible assets	623	
Changes in assets and liabilities:		
Accounts receivable	36,012	(16,383)
Unbilled services	248	6,075
Prepaid expenses and other current assets	(10,728)	(1,039)
Installments and collateralized receivables	(8,523)	(4,911)
Income taxes payable	(3,867)	(68)
Accounts payable, accrued expenses and other current liabilities	(14,373)	(7,146)
Deferred revenue	(23,236)	51,309
Other non-current liabilities	(7,304)	4,088
Net cash provided by operating activities	29,637	47,739
Cash flows from investing activities:		
Purchase of property, equipment and leasehold improvements	(1,794)	(7,146)
Capitalized computer software development costs	(1,917)	
Decrease in other assets	(917)	125
Net cash used in investing activities	(4,628)	(7,021)
Cash flows from financing activities:		
Proceeds from secured borrowings	5,532	68,338
Repayment of secured borrowings	(35,900)	(107,363)
Exercise of stock options and warrants		2,802
Issuance of common stock under employee stock purchase plan		467
Payment of tax withholding obligations related to restricted stock	(288)	(1,003)
Payments of long-term debt and capital lease obligations		(193)
Net cash used in financing activities	(30,656)	(36,952)
Effects of exchange rate changes on cash and cash equivalents	(2,144)	322



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Decrease (increase) in cash and cash equivalents	(7,791)	4,088
Cash and cash equivalents, beginning of period	134,048	132,267

Cash and cash equivalents, end of period                      \$ 126,257    \$ 136,355

Supplemental disclosure of cash flow information:

Interest paid	\$ 7,834	\$ 12,772
Income taxes paid	25,015	5,113

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

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**1. Interim Unaudited Condensed Consolidated Financial Statements**

The accompanying interim unaudited condensed consolidated financial statements (Interim Financial Statements) of Aspen Technology, Inc. and subsidiaries (AspenTech or the Company) have been prepared on the same basis as our annual consolidated financial statements. We condensed or omitted certain information and footnote disclosures normally included in our annual consolidated financial statements. Such Interim Financial Statements have been prepared in conformity with U.S. generally accepted accounting principles (GAAP) for interim financial information and pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (the SEC) for reporting on Form 10-Q. It is suggested that these Interim Financial Statements be read in conjunction with the audited consolidated financial statements for the year ended June 30, 2008, which are contained in our Annual Report on Form 10-K as previously filed with the SEC. In the opinion of management, all adjustments, consisting of normal and recurring adjustments, considered necessary for a fair presentation of the financial position, results of operations, and cash flows at the dates and for the periods presented have been included and all intercompany accounts and transactions have been eliminated in consolidation. The results of operations for the three and nine-month periods ended March 31, 2009 are not necessarily indicative of the results to be expected for the full fiscal year.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions. These estimates and assumptions 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.

**2. Immaterial Correction of Errors**

During the first quarter of fiscal 2009, we identified certain errors related to income taxes, stock compensation expense and foreign transactions, that originated in prior periods and concluded that the errors were not material to any of the previously reported periods. These immaterial errors were corrected in the first fiscal quarter 2009 Interim Financial Statements. The impact to certain captions in the unaudited condensed consolidated statement of operations for the nine months ended March 31, 2009, resulting from these out-of-period components of the immaterial corrections, is as follows (in thousands):

	<b>Nine Months Ended March 31, 2009</b>
	<b>Increase (Decrease)</b>
Total revenues	\$
Income from operations	887
Income before provision for taxes	315
Net income	(3,618)

During the second quarter of fiscal 2008, we identified certain errors that originated in prior periods and concluded that the errors were not material to any of the previously reported periods. These immaterial errors were corrected in the second fiscal quarter 2008 Interim Financial Statements. The impact to certain captions in the condensed consolidated statement of operations for the nine

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**2. Immaterial Correction of Errors (Continued)**

months ended March 31, 2008, resulting from these out-of-period components of the immaterial corrections, is as follows (in thousands):

	Nine Months Ended March 31, 2008 Increase (Decrease)
Total revenues	\$ (1,117)
Income from operations	(1,337)
Income before provision for taxes	(486)
Net income	358

**3. Income Taxes**

The tax provision was impacted by the reversal of a previously established reserve for uncertain tax positions in the amount of \$4.3 million for which the exposure no longer exists due to the statute of limitations expiring for the period which included the uncertain tax position. The anticipated tax provision at the U.S. statutory rate was favorably impacted primarily due to the release in the valuation allowance in the United States.

**4. Supplementary Balance Sheet Information**

Property, equipment and leasehold improvements in the accompanying unaudited condensed consolidated balance sheets consist of the following (in thousands):

	March 31, 2009	June 30, 2008
<b>Property, equipment and leasehold improvements at cost</b>		
Computer equipment	\$ 9,684	\$ 9,908
Purchased software	17,374	24,756
Furniture & fixtures	6,316	6,311
Leasehold improvements	3,681	4,009
Accumulated depreciation	(27,493)	(33,185)
<b>Property, equipment and leasehold improvements net</b>	<b>\$ 9,562</b>	<b>\$ 11,799</b>

Accrued expenses in the accompanying unaudited condensed consolidated balance sheets consist of the following (in thousands):

	March 31, 2009	June 30, 2008
Royalties and outside commissions	\$ 7,893	\$ 6,576
Payroll and payroll-related	9,990	19,434
Restructuring accruals	5,065	4,658
Amounts due to receivable sale facilities for collections	40	5,687
Other	17,470	25,391
<b>Total accrued expenses</b>	<b>\$ 40,458</b>	<b>\$ 61,746</b>

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**4. Supplementary Balance Sheet Information (Continued)**

Other long-term liabilities in the accompanying unaudited condensed consolidated balance sheets consist of the following (in thousands):

	March 31, 2009	June 30, 2008
Restructuring accruals	\$ 8,260	\$ 11,727
Deferred rent	2,438	2,562
Royalties and outside commissions	5,995	6,368
Other	18,005	23,653
<b>Total other non-current liabilities</b>	<b>\$ 34,698</b>	<b>\$ 44,310</b>

**5. Net Income**

Basic earnings per share was determined by dividing net income by the weighted average common shares outstanding during the period. Diluted earnings per share was determined by dividing net income by diluted weighted average shares outstanding during the period. Diluted weighted average shares reflects the dilutive effect, if any, of potential common shares. To the extent their effect is dilutive, potential common shares include common stock options and warrants, based on the treasury stock method, and other commitments to be settled in common stock. The calculations of basic and diluted net income per share and basic and diluted weighted average shares outstanding are as follows (in thousands, except per share data):

	Three Months Ended March 31,						Nine Months Ended March 31,					
	2009			2008			2009			2008		
	Income	Shares	Per Share Amount	Income	Shares	Per Share Amount	Income	Shares	Per Share Amount	Income	Shares	Per Share Amount
<b>Basic earnings per share:</b>												
Net income	\$ 8,096	90,065	\$ 0.09	\$ 4,033	89,972	\$ 0.04	\$ 42,710	90,042	\$ 0.47	\$ 4,288	89,522	\$ 0.05
<b>Diluted earnings per share:</b>												
Employee equity awards		1,273			3,396			2,177			3,602	
Warrants		310			466			401			741	
Net income giving effect to dilutive adjustments	\$ 8,096	91,648	\$ 0.09	\$ 4,033	93,834	\$ 0.04	\$ 42,710	92,620	\$ 0.46	\$ 4,288	93,865	\$ 0.05

The following potential common shares were excluded from the calculation of diluted weighted average shares outstanding because the exercise price of the stock options and warrants exceeded the average market price for our common stock and their effect would be anti-dilutive at the balance sheet date (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2009	2008	2009	2008
Employee equity awards and warrants	3,155	2,019	2,259	1,994

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**6. Comprehensive Income**

Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. The components of comprehensive income for the three and nine months ended March 31, 2009 and 2008 were as follows (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2009	2008	2009	2008
Net income	\$ 8,096	\$ 4,033	\$ 42,710	\$ 4,288
Foreign currency translation adjustments	134	(1,152)	(1,850)	(1,059)
Total comprehensive income	\$ 8,230	\$ 2,881	\$ 40,860	\$ 3,229

**7. Restructuring Charges**

During the three and nine months ended March 31, 2009, we recorded \$1.8 and \$2.0 million, respectively, in restructuring charges. Of this amount for the three and nine months ended March 31, 2009, \$1.6 million and \$1.7 million, respectively, related to headcount reductions and \$0.2 million and \$0.3 million, respectively, related to changes in the estimates of future operating costs and sublease assumptions related to restructuring programs originating in periods prior to June 30, 2008.

At March 31, 2009, total restructuring liabilities for all plans of \$13.3 million consisted of \$12.9 million of liabilities for the closure of facilities and \$0.4 million of liabilities for headcount reductions. Management anticipates that payments of \$5.2 million will be made over the next twelve months with the remaining \$9.3 million paid through 2016.

During the nine months ended March 31, 2009, the following activity was recorded (in thousands):

Summary Restructuring Plans	Closure/ Consolidation of Facilities	Employee Severance, Benefits, and Related Costs	Total
Accrued expenses and other non-current liabilities, June 30, 2008	\$ 16,354	\$ 31	\$ 16,385
Restructuring charge		1,567	1,567
Restructuring charge Accretion	506		506
Change in estimate Revised assumption	(211)	163	(48)
Sub-total	295	1,730	2,025
Payments	(3,707)	(1,378)	(5,085)
Accrued expenses and other non-current liabilities, March 31, 2009	\$ 12,942	\$ 383	\$ 13,325

**(a) Restructuring charges originally arising in the three months ended March 31, 2009**

In the three months ended March 31, 2009, we initiated a worldwide plan to reduce operating expenses by reorganizing business units through headcount reductions. During the three months ended March 31, 2009, we recorded a charge of \$1.6 million associated with headcount reductions. As of March 31, 2009, there was \$0.4 million in accrued expenses relating to headcount reductions.



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**ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**8. Commitments and Contingencies**

**(a) *FTC and Honeywell Settlement***

In December 2004, we entered into a consent decree with the Federal Trade Commission (FTC) with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech Ltd. and related subsidiaries of AEA Technology plc (Hyprotech) in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree we entered into an agreement with Honeywell International, Inc. (Honeywell) on October 6, 2004 (Honeywell Agreement), pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products.

On December 23, 2004, we completed the transactions contemplated by the Honeywell Agreement. Under the terms of the transactions:

We agreed to a cash payment of approximately \$6.0 million from Honeywell in consideration of the transfer of our operator training services business, our covenant not to compete in the operator training business until the third anniversary of the closing date, and the transfer of ownership of the intellectual property of our Hyprotech engineering products, \$1.2 million of which was held back by Honeywell and a portion of which was released upon resolution of adjustments for uncollected billed accounts receivable and unbilled accounts receivable, as discussed below;

We transferred and Honeywell assumed, as of the closing date, approximately \$4.0 million in accounts receivable relating to the operator training business; and

We entered into a two-year support agreement with Honeywell under which we agreed to provide Honeywell with source code of new releases of the Hyprotech engineering products provided to customers under standard software maintenance services agreements.

The Honeywell transaction resulted in a deferred gain of \$0.2 million, which was amortized over the two-year life of the support agreement, and was subject to a potential increase of the gain of up to \$1.2 million upon resolution of the holdback payment issue, which is discussed below.

We are subject to ongoing compliance obligations under the FTC consent decree. We responded to requests by the Staff of the FTC beginning in 2006 for information relating to the Staff's investigation of whether we have complied with the consent decree. In addition, the FTC voted to recommend to the Consumer Litigation Division (Division) of the U.S. Department of Justice that the Division commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. Although we believe that we complied with the consent decree and that the assertions by the FTC Staff were without merit, we engaged in settlement discussions with the FTC Staff regarding this matter. Following such discussions, on July 6, 2009, we announced that the FTC closed the investigation relating to the alleged violations of the decree, and issued an order modifying the consent decree. Following a thirty-day period for public comment on the modification to the original decree, the modified order became final on August 20, 2009. The modification to the 2004 consent decree requires that we continue to provide the ability for users to save input variable case data for Aspen HYSYS and Aspen HYSYS Dynamics software in a standard "portable" format, which will make it easier for users to transfer case data from later versions of the products to earlier versions. AspenTech will also provide documentation to Honeywell of the Aspen HYSYS and Aspen HYSYS Dynamics

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ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

8. Commitments and Contingencies (Continued)

input variables, as well as documentation of the covered heat exchange products. These requirements will apply to all existing and future versions of the covered products through 2014.

In March 2007, we were served with a complaint and petition to compel arbitration filed by Honeywell in New York State Supreme Court. The complaint alleges that we failed to comply with our obligations to deliver certain technology under the Honeywell Agreement, that we owe approximately \$0.8 million to Honeywell under the Honeywell Agreement, and that Honeywell is entitled to some portion of the \$1.2 million holdback retained by Honeywell under the holdback provisions of the Honeywell Agreement, plus unspecified monetary damages. In accordance with the Honeywell Agreement, certain of Honeywell's claims relating to the holdback were the subject of a proceeding before an independent accountant, who determined in December 2008 that we were entitled to a portion of the holdback. We reached a settlement in June 2009 and the matter has been dismissed. In connection with the settlement, AspenTech has provided to Honeywell a license to modify and distribute (in object code form) certain versions of AspenTech's flare system analyzer software.

*(b) Class action and opt-out claims*

In March 2006, we settled a class action litigation, including related derivative claims, arising out of our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which we restated in March 2005. Members of the class who opted out of the settlement (representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period) brought their own state or federal law claims against us, referred to as "opt-out" claims.

Separate actions were filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. One of these actions was settled. The claims in the remaining actions (described below) include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in our restated consolidated financial statements referenced in the class action.

*Feldman v. Aspen Technology, Inc., et al.*, filed on July 17, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-3021-BLS2 in that court, is an opt-out claim asserted by an individual who received 323,324 shares of our common stock in an acquisition. We reached a settlement with the plaintiff effective as of March 31, 2009 providing for dismissal of all the plaintiff's claims with prejudice, and a stipulation effectuating the dismissal was filed on May 29, 2009.

*Blecker, et al. v. Aspen Technology, Inc., et al.*, filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, is an opt-out claim asserted by persons who received 248,411 shares of our common stock in an acquisition. Fact discovery in this action closed on July 18, 2008, and a non-jury trial began on November 3, 2009. On October 17, 2008, the plaintiffs filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al.*, Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act. We served a motion to dismiss on December 3, 2008 which the plaintiffs have opposed. The motion was argued before the court on March 23, 2009 and is pending.



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**ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**8. Commitments and Contingencies (Continued)**

*380544 Canada, Inc., et al. v. Aspen Technology, Inc., et al.*, filed on February 15, 2007 in the federal district court for the Southern District of New York and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement. Certain motions to dismiss filed by other defendants were resolved on May 5, 2009, and discovery is scheduled to conclude on February 12, 2010.

The remaining claims in the *Blecker* and *380544 Canada* actions referenced above are for damages totaling at least \$20 million, not including claims for treble damages and attorneys' fees. We plan to defend the actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

**(c) ATME Arbitration**

Prior to October 6, 2009, we had an exclusive reseller relationship covering certain countries in the Middle East with a reseller known as , AspenTech Middle East W.L.L., a Kuwait corporation (ATME or the reseller). Effective October 6, 2009, we terminated the reseller relationship for material breach by the reseller based on certain actions of the reseller. On November 2, 2009 the reseller filed a Claim Form (Arbitration) in the High Court of Justice, Queen's Bench Division, Commercial Court, London, England, reference 2009 Folio 1436 in the matter of an intended arbitration between the reseller and us, seeking an injunction against certain activities by us in the alleged former territory of the reseller. We believe that the reseller's claims are without merit, inasmuch as our termination of the relationship was based on actions by the reseller constituting material breach as defined in the reseller agreement document, and that the reseller is not entitled to such an injunction. We therefore intend to defend the claims vigorously. We can provide no assurance as to the outcome of this proceeding or the likelihood of the filing of additional proceedings such as a full arbitration, and these claims may result in judgments against us for significant damages and a possible injunction that would threaten our ability to do business directly in certain countries in the Middle East. In addition, regardless of the outcome, such claims may result in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business. The reseller agreement document relating to the terminated relationship contained a provision whereby we could be liable for a termination fee if the agreement were terminated other than for material breach. This fee would be calculated based on a formula contained in the reseller agreement that we believe was originally developed based on certain assumptions about the future financial performance of the reseller, as well as the reseller's actual financial performance. Based on the formula and the financial information provided to us by the reseller, which we have not had the opportunity to verify independently, a recent calculation associated with termination other than for material breach based on the formula would result in a termination fee of between \$60 million and \$77 million. Under the terminated reseller agreement document, no termination fee is owed on termination for material breach.

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**ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**8. Commitments and Contingencies (Continued)**

*(d) Other*

We are currently defending a customer claim of approximately \$5 million that certain of our software products and implementation services failed to meet customer expectations. Although we are defending the claim vigorously, the results of litigation and claims cannot be predicted with certainty, and unfavorable resolutions are possible and could materially affect our results of operations, cash flows or financial position. In addition, regardless of the outcome, litigation could have an adverse impact on us because of defense costs, diversion of management resources and other factors.

*(e) Other Commitments and Contingencies*

We have entered into an employment agreement with our president and chief executive officer providing for the payment of cash and other benefits in the event of termination of his employment in certain situations, including following a change in control. Payment under this agreement would consist of a lump sum equal to approximately two times (1) his annual base salary plus (2) the average of his annual bonus for the three preceding fiscal years. The agreement also provides that the payments would be increased in the event that it would subject him to excise tax as a parachute payment under the Internal Revenue Code. The increase would be equal to the additional tax liability imposed on him as a result of the payment.

We have entered into agreements with other executive officers, providing for severance payments in the event that the executive is terminated by us other than for cause. Payments under these agreements consist of continuation of base salary for a period of 12 months, payment of pro rated incentive plan amounts and other benefits specified therein.

**9. Segment Information**

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. Our chief operating decision maker is our Chief Executive Officer.

We have three operating segments: license, professional services, and maintenance and training. The chief operating decision maker assesses financial performance and allocates resources based upon the three lines of business.

The license line of business is engaged in the development and licensing of software. The professional services line of business offers implementation, advanced process control, real-time optimization and other professional services in order to provide its customers with complete solutions. The maintenance and training line of business provides customers with a wide range of support services that include on-site support, telephone support, software updates and various forms of training on how to use our products.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies. We do not track assets or capital expenditures for operating segments. Consequently, it is not practical to show assets, capital expenditures, depreciation or amortization by operating segments.

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**9. Segment Information (Continued)**

The following table presents a summary of operating segments for the three and nine months ended March 31, 2009 and 2008 (in thousands):

	License	Professional Services	Maintenance and Training	Total
<b>Three Months Ended March 31, 2009</b>				
Segment revenue	\$ 41,070	\$ 10,077	\$ 20,145	\$ 71,292
Segment expenses	14,756	9,129	3,861	27,746
Segment operating profit(1)	\$ 26,314	\$ 948	\$ 16,284	\$ 43,546
<b>Three Months Ended March 31, 2008</b>				
Segment revenue	\$ 40,018	\$ 14,530	\$ 19,696	\$ 74,244
Segment expenses	17,460	3,965	10,847	32,272
Segment operating profit(1)	\$ 22,558	\$ 10,565	\$ 8,849	\$ 41,972
<b>Nine Months Ended March 31, 2009</b>				
Segment revenue	\$ 137,979	\$ 38,381	\$ 63,965	\$ 240,325
Segment expenses	45,839	29,215	10,894	85,948
Segment operating profit(1)	\$ 92,140	\$ 9,166	\$ 53,071	\$ 154,377
<b>Nine Months Ended March 31, 2008</b>				
Segment revenue	\$ 108,716	\$ 43,308	\$ 61,277	\$ 213,301
Segment expenses	48,161	10,685	32,539	91,385
Segment operating profit(1)	\$ 60,555	\$ 32,623	\$ 28,738	\$ 121,916

- (1) The segment operating profits reported reflect only the expenses of the operating segment and do not contain an allocation for selling and marketing, general and administrative, research and development, restructuring and other corporate expenses incurred in support of the segments.

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## ASPEN TECHNOLOGY, INC. AND SUBSIDIARIES

## NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## 9. Segment Information (Continued)

## Reconciliation to Income Before Provision for Taxes

The following table presents a reconciliation of total segment operating profit to income before provision for income taxes for the three and nine months ended March 31, 2009 and 2008 (in thousands):

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2009	2008	2009	2008
Total segment operating profit for reportable segments	\$ 43,546	\$ 41,972	\$ 154,377	\$ 121,916
Cost of license and amortization for technology related costs	(3,063)	(4,034)	(8,587)	(11,241)
Selling and Marketing	(4,385)	(4,972)	(12,950)	(12,695)
Research and development	(8,361)	(8,901)	(24,264)	(25,305)
General and administrative and overhead	(19,333)	(18,523)	(57,956)	(53,457)
Stock compensation and employee tax reimbursements	(1,280)	(2,080)	(3,659)	(8,370)
Corporate and executive bonuses	(901)	(1,466)	(2,705)	(4,744)
Restructuring charges and FTC legal costs	(1,760)	(111)	(2,025)	(8,628)
Gain (loss) on sales and disposals of assets		(13)	(3)	87
Impairment of goodwill and intangible assets			(623)	
Other income (expense)	(3,308)	2,653	(3,969)	4,846
Interest income, net	2,946	1,626	9,219	4,344
Income before provision for income taxes	\$ 4,101	\$ 6,151	\$ 46,855	\$ 6,753

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

We begin Management's Discussion and Analysis of Financial Condition and Results of Operations with an overview of our key operating business segments and significant trends. This overview is followed by a summary of our critical accounting policies and estimates that we believe are important to understanding the assumptions and judgments incorporated in our reported financial results. We then provide a more detailed analysis of our financial condition and results of operations.

In addition to historical information, this Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties that could cause our actual results to differ materially. When used in this report, the words "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates" and similar expressions are generally intended to identify forward-looking statements. You should not place undue reliance on these forward-looking statements, which reflect our opinions only as of the date of this Quarterly Report. You should carefully review the risk factors described in "Item 1A. Risk Factors" of Part II below, other documents we file from time to time with the U.S. Securities and Exchange Commission, including our Annual Report on Form 10-K for our fiscal year ended June 30, 2008, together with subsequent reports we have filed with the Securities and Exchange Commission on Forms 8-K, which may supplement, modify, supersede, or update those risk factors. We undertake no obligation to publicly release any revisions to the forward-looking statements after the date of this document.

Our fiscal year ends on June 30, and references in this Form 10-Q to a specific fiscal year are the twelve months ended June 30 of such year (for example, "fiscal 2009" refers to the year ending June 30, 2009).

**Business Overview**

We are a leading supplier of integrated software and services to the process industries, for which the principal markets consist of: energy, chemicals, pharmaceuticals, and engineering and construction. Additionally, we also serve other industries such as power and utilities, consumer products, metals and mining, pulp and paper and biofuels, which manufacture and produce products from a chemical process. We provide a comprehensive, integrated suite of software applications that utilize proprietary empirical models of chemical manufacturing processes to improve plant and process design, economic evaluation, production, production planning and scheduling, supply chain optimization, and operational performance, and an array of services designed to optimize the utilization of these products by our customers. We are organized into three operating segments: software licenses, maintenance and training, and professional services. Each of these operating segments has unique characteristics and faces different opportunities and challenges. Although we report our actual results in U.S. dollars, we conduct a significant number of transactions in currencies other than U.S. dollars.

Adverse changes in the economy and global economic and political uncertainty have previously caused delays and reductions in information technology spending by our customers and a consequent deterioration of the markets for our products and services, particularly our manufacturing/supply chain product suites. As a result of the decline in economic conditions during fiscal 2009, we experienced some reductions, delays and postponements of customer purchases that negatively impacted our bookings, revenues and operating results.

*Our Commercial Model*

We license software products to our customers predominantly through our direct sales force, and indirectly through channel partners. As described more fully below, revenues are generated from the following sources:

software license fees   licensing the use of our products;

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maintenance and training fees providing customer technical support, access to software fixes, updates and enhancements, and education/training; and

professional services providing consulting to assist customers in realizing maximum value from our software solutions as well as implementation and configuration services.

The timing and amount of fees recognized as revenue during a reporting period are determined in accordance with GAAP and revenues are reported net of applicable sales taxes. Under this commercial model, we license our products on both a term and perpetual basis. However, increasingly the majority of our software licenses are term-based.

Historically, the majority of our license revenue has been recognized on an up-front basis once all revenue recognition criteria have been met in accordance with Statement of Position 97-2 "Software Revenue Recognition," as amended by SOP 98-9 "Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions." We refer to this licensing practice as "the up-front revenue model". For licenses that did not meet the required criteria for immediate up-front revenue recognition, revenues were either deferred until such time as the criteria had been met, or recognized over the license term.

An overview of our three operating segments is described below.

*Software Licenses*

Our solutions are focused on three primary business areas of our customers: engineering, manufacturing, and supply chain management, and are delivered both as stand-alone solutions and as part of the integrated aspenONE product suite. The aspenONE framework enables our products to be integrated in modular fashion so that data can be shared among such products, and additional modules can be added as the customer's requirements evolve. The result is enterprise-wide access to real-time, model-based information designed to enable manufacturers to forecast or simulate the economic impact of potential actions and make better, faster and more profitable operating decisions. The first version of the aspenONE suite was delivered in late 2004. Since that time, each major software release was designed to increase the level of integration and functionality across our product portfolio.

**Engineering** Process manufacturers must be able to address a variety of challenging questions relating to strategic planning, collaborative engineering, debottlenecking and process improvement from where they should locate their facilities, to how they can make their products at the lowest cost, to what is the best way to operate for maximum efficiency. To address these issues, they must improve asset optimization to enable faster, better execution of complex projects. Our engineering solutions help companies maximize their return on plant assets and enable collaboration with engineers on common models and projects.

Our engineering solutions are used on the process engineer's desktop to design and improve plants and processes. Customers use our engineering software and services during both the design and ongoing operation of their facilities to model and improve the way they develop and deploy manufacturing assets. Our products enable our customers to improve their return on capital, improve physical plant operating performance and bring new products to market more quickly.

Our engineering tools are based on an open environment and are implemented on Microsoft Corporation's operating systems. Implementation of our engineering products does not typically require substantial professional services, although services may be provided for customized model designs, process synthesis and energy management analyses.

**Manufacturing** Our manufacturing products focus on optimizing customers' day-to-day process industry activities, enabling them to make better, more profitable decisions and improve plant

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performance. The typical production cycle offers many opportunities for optimizing profits. Process manufacturers must be able to address a wide range of issues driving execution efficiency and cost; from selecting the right feedstock and raw materials, to production scheduling, to identifying the right balance among customer satisfaction, costs and inventory. Our manufacturing products support the execution of the optimal operating plan in real time. These solutions include desktop and server applications and IT infrastructure that enable companies to model, manage and control their plants more efficiently, helping them to make better-informed, more profitable decisions. These solutions help companies make decisions that can reduce fixed and variable costs in the plant, improve product yields, procure the right raw materials and evaluate opportunities for cost savings and efficiencies in their operations.

**Supply chain management** Our supply chain management products enable companies to reduce inventory and increase asset efficiency by giving them the tools to optimize their supply chain decisions, from choosing the right raw materials to delivering finished product in the most cost-effective manner. The ever-changing nature of the process industries means new profit opportunities can appear at any time. To identify and seize these opportunities, process manufacturers must be able to increase their access to data and information across the value chain, optimize planning and collaborate across the value chain, and detect and exploit supply chain opportunities. Our supply chain management solutions include desktop and server applications and IT infrastructure that enable manufacturers to operate their plants and supply chains more efficiently, from customer demand through manufacturing to delivery of the finished product. These solutions help companies to reduce inventory carrying costs, respond more quickly to changes in market conditions and improve customer service.

Because fees for our software products can be substantial and the decision to purchase our products often involves members of our customers' senior management, the sales process for our solutions is frequently lengthy and can exceed one year. Accordingly, the timing of our license bookings and revenues is difficult to predict. Additionally, we derive a majority of our total revenues from companies in or serving the energy, chemicals, pharmaceutical, and engineering and construction industries. Accordingly, our future success depends upon the continued demand for manufacturing optimization software and services by companies in these process manufacturing industries. The energy, chemicals, pharmaceutical, and engineering and construction industries are highly cyclical and highly reactive to the price of oil, as well as general economic conditions.

Our software license business represented 58.4% of our total revenues on a trailing four-quarter basis. During 2009, we continued to grow our installed base of software licenses and increased the total value of signed license contracts on a year over year basis.

*Maintenance and Training*

Our maintenance business consists primarily of providing customer technical support and access to software fixes and upgrades, when and if they become available. Our customer technical support services are provided throughout the world by our three global call centers as well as via email and through our support website. Our training business consists of a variety of training solutions ranging from standardized training, which can be delivered in a public forum or onsite at a customer's location, to customized training sessions which can be tailored to fit customer needs.

Revenues generated by our maintenance and training business represented 25.5% of our total revenues on a trailing four quarter basis and are closely correlated to changes in our installed base of software licenses. The majority of our customers renew their support contracts when eligible to do so, and the majority of new software license contracts sold include a maintenance component.

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*Professional Services*

We offer professional services that include designing, analyzing, debottlenecking and improving plant performance through continuous process improvements, coupled with activities aimed at operating the plant safely and reliably while minimizing energy costs and improving yields and throughput. Our implementation and configuration services are primarily associated with assisting customers in their deployment of our manufacturing and supply chain management solutions.

Customers who obtain professional services from us typically engage us to provide such services over periods of up to 24 months. We generally charge customers for professional services, ranging from supply chain to on-site advanced process control and optimization assistance services, on a fixed-price basis or time-and-materials basis. The professional services business represented 16.1% of our total revenues on a trailing four-quarter basis, and has experienced lower margins than our other business segments.

**Critical Accounting Estimates and Judgments**

Our condensed consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The preparation of our financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The significant accounting policies that we believe are the most critical to aid in fully understanding and evaluating our reported financial results include the following:

revenue recognition for both software licenses and fixed-fee professional services;

impairment of long-lived assets, goodwill and intangible assets;

accounting for contingencies; and

accounting for income taxes

Please refer to Management's Discussion and Analysis of Financial Condition and Results of Operations contained in Part II, Item 7 of our Annual Report on Form 10-K for our fiscal year ended June 30, 2008 for a more complete discussion of our critical accounting policies and estimates.



Table of Contents**Results of Operations***Comparison of the Three and Nine Months Ended March 31, 2009 and 2008*

The following table sets forth the percentage of total revenues represented by certain condensed consolidated statements of operations data for the three and nine months ended March 31, 2009 and 2008 (in thousands):

	Three Months Ended March 31,				Nine Months Ended March 31,			
	2009		2008		2009		2008	
<b>Revenues:</b>								
Software licenses	\$ 41,070	57.6%	\$ 40,018	53.9%	\$ 137,979	57.4%	\$ 108,716	51.0%
Service and other	30,222	42.4	34,226	46.1	102,346	42.6	104,585	49.0
Total revenues	71,292	100.0	74,244	100.0	240,325	100.0	213,301	100.0
<b>Cost of revenues:</b>								
Cost of software licenses	3,063		4,034		8,562		11,241	
Cost of service and other	15,333		17,416		47,139		51,824	
Amortization of technology-related intangible assets					25			
Total cost of revenues	18,396	25.8	21,450	28.9	55,726	23.2	63,065	29.6
Gross profit	52,896	74.2	52,794	71.1	184,599	76.8	150,236	70.4
<b>Operating costs:</b>								
Selling and marketing	21,632	30.3	25,362	34.2	66,172	27.5	70,946	33.3
Research and development	10,548	14.8	11,592	15.6	31,287	13.0	33,853	15.9
General and administrative	14,493	20.3	13,844	18.6	42,884	17.8	39,333	18.4
Restructuring charges	1,760	2.5	111	0.1	2,025	0.8	8,628	4.0
Loss (gain) on sales and disposals of assets		0.0	13	0.0	3	0.0	(87)	(0.0)
Impairment of goodwill and intangible assets		0.0		0.0	623	0.3		0.0
Total operating costs	48,433		50,922		142,994		152,673	
<b>Income (loss) from operations</b>								
Income (loss) from operations	4,463	6.3	1,872	2.5	41,605	17.3	(2,437)	(1.1)
Interest income	5,176	7.3	6,136	8.3	17,046	7.1	18,082	8.5
Interest expense	(2,230)	(3.1)	(4,510)	(6.1)	(7,827)	(3.3)	(13,738)	(6.4)
Other (expense) income, net	(3,308)	(4.6)	2,653	3.6	(3,969)	(1.7)	4,846	2.3
	4,101	5.8	6,151	8.3	46,855	19.5	6,753	3.2

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Income before provision for taxes								
Benefit (provision) for income taxes	3,995		(2,118)		(4,145)		(2,465)	
Net income	\$ 8,096	11.4%	\$ 4,033	5.4%	\$ 42,710	17.8%	\$ 4,288	2.0%

*Total Revenues.*

Total revenues for third quarter of fiscal 2009 decreased by \$3.0 million compared to the corresponding period in the prior fiscal year.

Total revenues for the nine months ended March 31, 2009 increased by \$27.0 million compared to the corresponding period in the prior fiscal year.

*Software License Revenues*

Software license revenues are generated primarily from term license contracts, and to a lesser degree, from perpetual arrangements. Since we have relationships with most leading companies in the process industries, growth in our software license revenues is derived from the expansion of existing customer relationships, either through licensing for incremental users or by licensing additional software

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products in the aspenONE suite. The addition of new customers has traditionally represented a smaller component of our revenue growth.

During the third quarter and first nine months of fiscal 2009 and fiscal 2008, a significant portion of our license bookings were not recorded as revenue in the same fiscal period due to certain revenue recognition criteria not being met (see further discussion under "Liquidity and Capital Resources" related to deferred revenue). Revenues from software licenses in the third quarter and first nine months of fiscal 2009 increased \$1.1 million and \$29.3 million, respectively, compared to the corresponding periods of the prior fiscal year. The period-over-period revenue increase was primarily driven by the timing of revenue recognition under GAAP as opposed to a function of actual license bookings. During the third quarter and first nine months of fiscal 2009, a significant amount of prior period license bookings were recognized as revenue. This level of prior period bookings being recognized as revenue represents a considerable increase over the third quarter and first nine months of fiscal 2008.

*Service and Other Revenues*

Service and other revenues primarily consist of professional services, post-contract maintenance support on software licenses, and training, and are dependent upon a number of factors.

the number, value and rate per hour of services transactions booked during the current and preceding periods;

the number and availability of service resources actively engaged on billable projects;

the timing of milestone acceptance for engagements contractually requiring customer sign-off;

the timing of collection of cash payments when collectability is uncertain;

the timing of negotiating and signing maintenance renewals; and

the size of the installed base of license contracts.

Service and other revenues in the third quarter of fiscal 2009 decreased by \$4.0 million compared to the corresponding period in the prior fiscal year. This decrease was primarily due to lower professional services revenue during the third quarter of fiscal 2009 of \$4.5 million. The global economic environment during the fiscal year generally impacted our customers' ability to commit to more discretionary spending initiatives, which affected our professional services business.

Service and other revenues in the first nine months of fiscal 2009 decreased by \$2.2 million compared to the corresponding period in the prior fiscal year. This decrease was primarily due to lower professional services revenue during the first nine months of fiscal 2009 of \$4.9 million offset by higher maintenance revenues of \$2.7 million.

*Cost of Software Licenses*

Cost of software licenses consists of royalties, amortization of previously capitalized software costs, costs related to delivery of software, including disk duplication and third-party software costs, printing of manuals and packaging.

Cost of software licenses in third quarter and first nine months of fiscal 2009 decreased by \$1.0 million and \$2.7 million, respectively, compared to the corresponding periods in the prior fiscal year. Both of these decreases were primarily due to lower capitalized software amortization charges and reduced royalty expenses. Royalty fees were lower because the specific mix of license products sold contained less third party software than in the corresponding periods of prior fiscal years.

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*Cost of Service and Other*

Cost of service and other consists primarily of personnel-related and external consultant costs associated with providing professional services, post-contract maintenance support, and training to customers.

Cost of service and other in the third quarter of fiscal 2009 decreased by \$2.1 million compared to the corresponding period in the prior fiscal year. These decreases were primarily due to lower staffing needs as a result of the decreased demand for our professional services. Additionally, the cost to deliver maintenance support was reduced by consolidating work and bringing previously outsourced services, which carried a higher cost to us, in house.

Cost of service and other in the nine months ended March 31, 2009 decreased by \$4.7 million compared to the corresponding period in the prior fiscal year. These decreases were primarily due to lower staffing needs as a result of the decreased demand for our professional services. Stock-based compensation expense decreased because we have been unable to issue new equity based compensation awards since fiscal 2007. Additionally, the cost to deliver maintenance support was reduced by consolidating work and bringing previously outsourced services, which carried a higher cost to us, in house.

*Selling and Marketing*

Selling costs are primarily the personnel and travel expenses related to the effort expended to license our products and services to current and potential customers, as well as for overall management of customer relationships. Marketing costs include expenses needed to promote the Company and our products and to acquire market research and measure customer opinions to help us better understand our customers and their business needs.

Selling and marketing expenses in the third quarter of fiscal 2009 decreased by \$3.7 million compared to the corresponding period in the prior fiscal year. This decrease was largely the result of lower personnel related costs including salaries, commissions, bonuses, and stock based compensation. Stock-based compensation expense decreased because we have been unable to issue new equity based compensation awards since fiscal 2007. Additionally, there were other decreases in costs related to travel, external consultants and marketing events.

Selling and marketing expenses in the first nine months of fiscal 2009 decreased by \$4.8 million compared to the corresponding period in the prior fiscal year. This decrease was largely the result of lower personnel related costs including commissions, bonuses, and stock based compensation. Stock-based compensation expense decreased because we have been unable to issue new equity based compensation awards since fiscal 2007.

*Research and Development*

Research and development ("R&D") expenses primarily consist of personnel and external consultants costs related to the creation of new products, and enhancements and engineering changes to existing products.

R&D expenses in the third quarter of fiscal 2009 decreased by \$1.0 million compared to the corresponding period in the prior fiscal year, primarily due to a reduction in incentive bonuses for employees and decreases in stock based compensation. Stock-based compensation expense decreased because we have been unable to issue new equity based compensation awards since fiscal 2007.

R&D expenses in the first nine months of fiscal 2009 decreased by \$2.6 million compared to the corresponding period in the prior fiscal year. This decrease was primarily due to a reduction in incentive bonuses for employees and decreases in stock based compensation. Stock-based compensation

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expense decreased because we have been unable to issue new equity based compensation awards since fiscal 2007. Additionally, we capitalized a higher portion of our R&D costs during the first nine months of fiscal year 2009 as compared to the corresponding periods of the prior fiscal year, which contributed to a period-over-period decrease in R&D expenses.

*General and Administrative*

General and administrative expenses include the costs of corporate and support functions which include executive leadership and administration groups: finance; legal; human resources; corporate communications, and other costs such as outside professional and consultant fees and provisions for doubtful accounts.

General and administrative expenses third quarter of fiscal 2009 increased by \$0.6 million compared to the corresponding period in the prior fiscal year. The increase was primarily attributed to extensive use of external financial consultants, and to a lesser extent, an increase in personnel costs. These finance cost increases were partially offset by lower legal and recruiting costs.

General and administrative expenses in the first nine months of fiscal 2009 increased by \$3.6 million compared to the corresponding period in the prior fiscal year. These higher costs were significant and included extensive use of external financial consultants, and to a lesser extent, an increase in personnel costs. These finance cost increases were partially offset by lower legal and recruiting costs. Stock-based compensation expense also decreased because we have been unable to issue new equity based compensation awards since fiscal 2007.

*Restructuring Charges*

Restructuring charges in third quarter of fiscal 2009 increased by \$1.6 million compared to the corresponding period in the prior fiscal year. During the third quarter of fiscal 2009 we initiated a plan to reduce operating expenses that resulted in the reduction of our workforce and a charge of \$1.6 million.

Restructuring charges during the first nine months of fiscal 2009 decreased by \$6.6 million compared to the corresponding period in the prior fiscal year. Costs during the fiscal 2009 periods were significantly lower than the restructuring charge that was incurred in the corresponding periods of the prior fiscal year which included the costs associated with the relocation of our corporate headquarters.

*Interest Income*

Interest income is generated from the accretion of interest on the long term installment payments of software license contracts where revenue was recognized up-front, and to a lesser extent from the investment of cash balances in short term instruments

Interest income decreased by \$1.0 million in both the third quarter and first nine months of fiscal 2009 compared to the corresponding periods in the prior fiscal year primarily due to lower average receivables balances for both installment and collateralized receivables.

*Interest Expense*

Interest expense is incurred on our secured borrowings. The secured borrowings are derived from our borrowing arrangements with unrelated financial institutions.

Interest expense decreased by \$2.3 million and \$5.9 million in the third quarter and first nine months of fiscal 2009, respectively, compared to the corresponding periods in the prior fiscal year. The decrease was attributable to lower average secured borrowing balances, principally due to the repayment of three significant securitizations during fiscal 2008.

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*Other (Expense) Income, Net*

Other income (expense), net is comprised primarily of foreign currency exchange gain (loss) generated from transactions denominated in foreign currencies. To mitigate this risk we occasionally enter into foreign currency forward contracts to attempt to minimize the adverse impact related to unfavorable exchange rate movements. Our foreign currency forward contracts have not been designated as hedging instruments and, therefore, do not qualify for fair value or cash flow hedge treatment under the criteria of SFAS No. 133 "Accounting for Derivative Instruments and Hedging Activities". Therefore, the unrealized gains and losses on the foreign currency forward contracts, as well as the underlying transactions we are attempting to shield from exchange rate movements, have been recognized as a component of other income (expense), net.

Other income, net in the third quarter and nine months ended March 31, 2009 decreased by \$6.0 million and \$8.8 million, respectively, compared to the corresponding periods in the prior fiscal year. These increases were primarily due to the strengthening of the U.S. dollar against the Pound Sterling and the Euro.

*Provision for Income Taxes*

The provision for income taxes for the third quarter of fiscal 2009 decreased by \$6.1 million compared to the corresponding period in the prior fiscal year. The decrease was principally due to a reversal of a previously established reserves for uncertain tax positions and profitability in certain of our foreign tax-paying subsidiaries versus certain other foreign subsidiaries offset by a reduction in the valuation allowance in the United States.

The provision for income taxes for the first nine months of fiscal 2009 increased by \$1.7 million. The increase compared to the corresponding period in the prior fiscal year was principally due to an additional reserve for uncertain tax positions with respect to transfer pricing and intercompany transactions as well as the mix of profitability in certain of our foreign tax-paying subsidiaries versus certain other foreign subsidiaries offset by a reduction in the valuation allowance in the United States.

**Liquidity and Capital Resources**

*Resources*

Our primary source of cash is from licensing of our products. Our primary use of cash is payment of our operating costs which consist primarily of employee-related expenses, such as compensation and benefits, as well as general operating expenses for marketing, facilities and overhead costs. We historically have financed our operations through cash generated from operating activities, public offerings of our convertible debentures and common stock, private offerings of our preferred stock and common stock, borrowings secured by our installment receivable contracts and borrowings under bank credit facilities. As of March 31, 2009, our principal sources of liquidity consisted of \$126.3 million in cash and cash equivalents and \$17.3 million of unused borrowings under our credit facility. The amount of unused borrowings actually available under the credit facility varies in accordance with the terms of the agreement. We believe that the amount of borrowing capacity currently available along with our current cash and cash equivalents balance and future cash flows from operations, will be sufficient to meet our anticipated cash needs for at least the next twelve months. We are not currently dependent upon short-term funding, and the limited availability of credit in the market has not affected our credit facility or our liquidity, or materially impacted our funding costs.

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The following table summarizes our cash flow activities for the nine months ended March 31, 2009 (in thousands):

Cash flow provided by (used in):	
Operating activities	\$ 29,637
Investing activities	(4,628)
Financing activities	(30,656)
Effect of exchange rates on cash balances	(2,144)
Decrease in cash and cash equivalents	\$ (7,791)

*Operating Activities*

Cash generated by operating activities is one of our primary sources of liquidity and provided \$29.6 million during the nine months ended March 31, 2009. This amount resulted from net income of \$42.7 million, adjusted for non-cash charges of \$18.7 million and a net \$31.8 million use of cash due to an increase in working capital accounts.

Non-cash items within net income consisted primarily of \$6.6 million of depreciation and amortization, \$3.7 million of stock-based compensation, \$5.2 million of net unrealized foreign currency losses driven by the strengthening of the U.S. dollar, and \$1.4 million of deferred income taxes.

Our cash balance decreased in part due to a \$31.8 million net increase in working capital. The changes in working capital consisted primarily of: a decrease in accounts receivable of \$36.0 million; partially offset by decreases in deferred revenues of \$23.2 million; decreases in accounts payable and accrued expenses and other current liabilities of \$14.4 million; increases in prepaid expenses and other current liabilities of \$10.7 million; increases in installments and collateralized receivables of \$8.5 million and decreases in other non-current liabilities of \$7.3 million.

The decrease in deferred revenue was primarily attributable to the timing of revenue recognition for certain license agreements that were signed during fiscal 2008, but not fully delivered and therefore did not meet revenue recognition criteria until fiscal 2009. While we had a material amount of license bookings closed during the first half of fiscal 2009 that were not recognized as revenue during the period, unlike fiscal 2008, the majority of these license bookings were not recorded as receivables and deferred revenue on our March 31, 2009 balance sheet. The decrease in accounts receivable resulted from a number of large contracts closed during the fourth quarter of fiscal 2008 where customers elected to pay for their multi-year contract at the outset of the arrangement, resulting in the full contract value of the receivable being recorded as accounts receivable at the end of fiscal 2008. There was a lower dollar value of contracts with similar terms in the third quarter of fiscal 2009. The decreases in accounts payable, accrued expenses and other current liabilities were primarily due to lower income taxes payable and accrued bonus amounts.

Looking ahead, we expect to generate positive cash flow from operations. We anticipate that existing cash balances together with funds generated from operations will be sufficient to finance our operations and meet our cash requirements for the foreseeable future.

*Investing Activities*

During the first nine months of fiscal 2009, we used \$4.6 million of cash for investments to upgrade our financial reporting and management information systems as well as the purchase of additional property and equipment. We are continuing our efforts to enhance our information system and implement other related internal control changes, which have been designed in part to remediate our material weakness in internal controls over financial reporting. A portion of the remediation costs

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are expected to be incurred to upgrade our existing financial applications. We do not expect these costs to be materially different from our IT investment costs prior fiscal years.

We are not currently party to any material purchase contracts related to future capital expenditures.

*Financing Activities*

During the first nine months of fiscal 2009, we used \$30.7 million of cash for financing activities of which \$30.4 million was used to reduce our secured borrowing balances. Based on the current cash forecast, we expect secured borrowing balances to continue to decline during the remainder of fiscal 2009 and fiscal 2010.

***Borrowings Collateralized by Receivable Contracts***

***Traditional Programs***

We historically have maintained arrangements, which we refer to as our Traditional Programs, with financial institutions providing for borrowings that are secured by our installment and other receivable contracts, and for which limited recourse exists against us. Under our arrangements with General Electric Capital Corporation, Bank of America and Silicon Valley Bank (SVB), both parties must agree to enter into each transaction and negotiate the amount borrowed and interest rate secured by each receivable. The customers' payments of the underlying receivables fund the repayment of the related amounts borrowed. The weighted average interest rate on the secured borrowings was 7.6% at March 31, 2009 and June 30, 2008.

The collateralized receivables earn interest income, and the secured borrowings accrue borrowing costs at approximately the same interest rates. When we receive cash from a customer, the collateralized receivables is reduced and the related secured borrowing is reclassified to an accrued liability for amounts we must remit to the financial institution. The accrued liability is reduced when payment is remitted to the financial institutions. The terms of the customer installments receivable range from amounts that are due within 30 days to installment receivables that are due over five years.

Under these arrangements, we received aggregate cash proceeds of \$5.5 million and \$68.3 million for the nine months ended March 31, 2009 and 2008, respectively. Since December 2007, we have not sold any receivables for the purpose of raising cash, but we have sold some large dollar receivables in order to fund the repurchase of several other groups of smaller receivables previously sold to the banks, for the purpose of simplifying the administration of the programs. As of March 31, 2009, we had outstanding secured borrowings of \$122.5 million that were secured by collateralized receivables totaling \$110.0 million under the Traditional Programs.

We estimate that there was in excess of \$32.4 million available under the SVB program at March 31, 2009. As the collection of the collateralized receivables and resulting payment of the borrowing obligation will reduce the outstanding balance, the availability under the arrangement can be increased. We expect to maintain our access to cash under this arrangement and to transfer installments receivable as business requirements dictate. Our ongoing ability to access the available capacity will depend upon a number of factors, including the generation of additional customer receivables and the financial institution's willingness to continue to enter into these transactions.

Under the terms of the Traditional Programs, we have transferred the receivables to the financial institutions with limited financial recourse to us. We can be required to repurchase the receivables under certain circumstances in case of specific defaults by us as set forth in the program terms. Potential recourse obligations are primarily related to the SVB arrangement that requires us to pay interest to SVB when the underlying customer has not paid by the installment due date. This recourse is limited to a maximum period of 90 days after the due date. The amount of outstanding installment



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receivables that has this potential recourse obligation is \$44.9 million at March 31, 2009. This 90 day recourse obligation is recognized as interest expense as incurred and totaled \$0.1 million and \$0.4 million for the nine months ended March 31, 2009 and 2008, respectively. Other than the specific items noted above, the financial institutions bear the credit risk of the customers associated with the receivables the institution purchased.

In the ordinary course of acting as a servicing agent for receivables transferred to SVB, we regularly receive funds from customers that are processed and remitted onward to SVB. While in our possession, these cash receipts are contractually owned by SVB and are held by us on their behalf until remitted to the bank. Cash receipts held for the benefit of SVB recorded in our cash balances and current liabilities totaled \$0 and \$0.9 million as of March 31, 2009 and June 30, 2008, respectively. Such amounts are restricted from our use.

The terms of the asset purchase agreement for one of the programs requires the timely reporting of financial information. As of March 31, 2009, we were not in compliance with that requirement. We have obtained waivers for such non-compliance which extends the deadline for delivering the fiscal 2009 financial information until November 30, 2009. We are in the process of obtaining an additional waiver to extend the reporting deadline for the financial information for the first quarter of fiscal 2010. Because the Company has been unable to timely report financial information and the waiver of this covenant does not extend the grace period for a year and a day past the balance sheet date, the obligation under this program has been classified as a current obligation in the accompanying consolidated balance sheet as of March 31, 2009. The amount of this obligation that is included in current liabilities that is due beyond one year is \$46.4 million as of March 31, 2009.

In June 2008, we paid the outstanding amount under the Bank of America program at its carrying value of \$2.7 million inclusive of a one percent pre-payment penalty.

***Securitization of Accounts Receivable***

During fiscal 2005 and 2007 we entered into two securitization arrangements where we securitized and transferred receivables with a net carrying value of \$71.9 million and \$32.1 million, respectively, and received cash proceeds of \$43.8 million and \$20.0 million, respectively. These borrowings were secured by the transferred receivables, and the debt and borrowing costs were repaid as the receivables were collected. Neither arrangement met the criteria for a sale and as such had been accounted for as a secured borrowing. We received and retained collections on these receivables after all borrowing and related costs were paid to the financial institution. The financial institutions' rights to repayment were limited to the payments received from the receivables. Both securitizations were paid off during fiscal 2008 at their respective carrying values of \$4.2 million and \$12.2 million. The payments resulted in a reclassification to accounts receivable of \$9.8 million and to current installments receivable of \$17.8 million from the current portion of collateralized receivables, and \$23.9 million from non-current collateralized receivables to non-current installment receivables.

***Credit Facility***

In January 2003 and through subsequent amendments, we executed a loan arrangement with SVB. This arrangement provides a line of credit of up to the lesser of (i) \$25.0 million or (ii) 80% of eligible domestic receivables. The line of credit bears interest at the greater of the bank's prime rate (3.25% at March 31, 2009) plus 0.5%, or 4.75%. If we maintain a \$10.0 million compensating cash balance with the bank, our unused line of credit fee will be 0.1875% per annum; otherwise it will be 0.375% per annum. The line of credit is collateralized by substantially all of our assets and we are required to provide certain financial information and to meet certain financial covenants, including minimum tangible net worth, minimum cash balances and an adjusted quick ratio. As of March 31, 2009, we were not in compliance with certain reporting requirements under the terms of the loan arrangement, and

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we have obtained waivers for such non-compliance. Furthermore, the terms of the loan arrangement restrict our ability to pay dividends, with the exception of dividends paid in common stock or preferred stock dividends paid in cash.

On November 3, 2009, we executed an amendment to the loan arrangement that adjusted certain terms of covenants, including modifying the date we must provide monthly unaudited and annual audited financial statements to the bank and the maturity date of the credit loan, which was extended to May 15, 2010. As of March 31, 2009, there were \$7.9 million in letters of credit outstanding under the lines of credit, and there was \$17.3 million available for future borrowing.

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

In the ordinary course of conducting business, we are exposed to certain risks associated with potential changes in market conditions. These market risks include changes in currency exchange rates and interest rates. In order to manage the volatility of our more significant market risks, we enter into derivative financial instruments such as forward currency exchange contracts.

**Foreign Currency Exposure**

Foreign currency risk arises primarily from the net difference between (a) non-U.S. dollar (non-USD) receipts from customers outside the U.S. and (b) non-USD operating costs for subsidiaries in foreign countries. Although it has been our historical practice to hedge the majority of our non-USD receipts, beginning in late fiscal 2008 we revised this practice to evaluate the need for hedges based on only the net exposure to foreign currencies. We measure our net exposure to each currency for which we have either cash inflows or outflows.

During fiscal 2009, our largest exposures to foreign exchange rates existed primarily with the Euro, British Pound Sterling, Canadian Dollar, and Japanese Yen against the U.S. dollar. The following table summarizes our forward contracts to sell foreign currencies in U.S. dollars at March 31, 2009 (in thousands):

Currency	Notional Amount
Euro	\$ 2,828
British Pound Sterling	266
Japanese Yen	(78)
Canadian Dollar	1,613
Swiss Franc	42
<b>Total</b>	<b>\$ 4,671</b>

**Investment Portfolio**

We do not use derivative financial instruments in our investment portfolio. We place our investments in instruments that meet high credit quality standards, as specified in our investment policy guidelines. We do not expect any material loss with respect to our investment portfolio from changes in market interest rates or credit losses, as our investments consist primarily of money market accounts. At March 31, 2009, all of the instruments in our investment portfolio were included in cash and cash equivalents.

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**Item 4. Controls and Procedures**

**a) Disclosure Controls and Procedures**

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of March 31, 2009. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of March 31, 2009, and due to the material weaknesses in our internal control over financial reporting described in our accompanying *Management's Report on Internal Control over Financial Reporting*, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were not effective.

**b) Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for our company. Internal control over financial reporting is defined in Rule 13a-15(f) and 15d-15(f) promulgated under the Exchange Act, as a process designed by, or under the supervision of, a Company's principal executive and principal financial officers and effected by the Company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;

provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made in accordance with authorizations of management and directors of the company; and

provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

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

Our management, including our chief executive officer and chief financial officer, assessed the effectiveness of our internal control over financial reporting as of March 31, 2009. In connection with this assessment, we identified the following material weaknesses in internal control over financial reporting as of June 30, 2008. A material weakness is a deficiency, or a combination of deficiencies, in

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internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control An Integrated Framework* (September 1992). Because of the material weaknesses described below, management concluded that, as of June 30, 2008, our internal control over financial reporting was not effective.

1) *Inadequate and ineffective monitoring controls*

Management did not sufficiently monitor internal control over financial reporting, specifically:

we lacked a sufficient number of accounting, tax and finance professionals to perform adequate supervisory reviews and monitoring activities over financial reporting matters and controls;

we did not have sufficient personnel with an appropriate level of technical accounting knowledge, experience, and training who could execute appropriate monitoring and review controls particularly in situations where transactions were complex or non-routine;

we did not have sufficient personnel to monitor the timely review of period-end account reconciliations to ensure appropriate and timely recording of required adjustments; and

we lacked a sufficient number of qualified professionals to monitor compliance with certain established policies and procedures related to our internal controls.

This material weakness contributed to the additional material weaknesses discussed below.

2) *Inadequate and ineffective controls over the periodic financial close process*

We did not have adequate controls in our financial close process that would provide reasonable assurance that financial statements could be prepared in accordance with GAAP. Specifically, we did not have: (a) properly designed or effectively operating process, systems and review of our periodic closing activities to ensure accurate and timely generation of financial statements; primarily with respect to timely and accurate recording of license and professional services revenue, non-standard expense accruals, tax expenses and deferred tax assets; (b) properly designed and consistently performed account reconciliations and review of manual journal entries; (c) effectively designed and operating controls for consolidation and accounting for intercompany activities including those denominated in foreign currencies; and (d) effectively operating reconciliation or review controls to ensure the appropriate accounting for stock-based awards.

This material weakness resulted in material post-closing adjustments reflected in the financial statements for the year ended June 30, 2008 and all reporting periods through the date of this filing. These adjustments resulted in changes to assets, liabilities, stockholders' equity, revenue and expenses.

3) *Inadequate and ineffective controls over income tax accounting and disclosure*

We did not have adequate design or operation of controls that provide reasonable assurance that the accounting for income taxes and related disclosures were prepared in accordance with GAAP. Specifically, we did not have sufficient staffing and technical expertise in the tax function to provide adequate review and control with respect to the (a) foreign subsidiary tax provisions and related accruals; (b) complete and accurate recording of deferred tax assets and liabilities due to differences in accounting treatment for book and tax purposes; and (c) complete and accurate recording of income tax accounting entries and corresponding tax provisions and accruals.

This material weakness contributed to material post-closing adjustments which have been reflected in the financial statements for the year ended June 30, 2008 and all reporting periods through the date



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of this filing. These adjustments resulted in changes in deferred income tax assets and liabilities, accrued tax liability, income tax expense, retained earnings and related disclosures.

4) *Inadequate and ineffective controls over the recognition of revenue*

We did not have adequate controls that provided reasonable assurance that revenue was recorded in accordance with GAAP. Specifically, the complexity of arrangements and timing of license shipments make it difficult to consistently determine appropriate revenue recognition in an accurate and timely manner. In addition, we did not have: (a) appropriately documented revenue recognition policies and procedures, and adequately designed or effectively operating review controls to ensure that revenue would be recorded consistently in accordance with GAAP; (b) effective communications between each of our departments regarding matters that may have accounting consequences; (c) appropriately designed or effectively operating review controls performed by individuals with appropriate technical expertise to ensure that multiple-element arrangements and non routine transactions were properly accounted for; (d) appropriately designed system configuration controls or effectively operating review and reconciliation controls to ensure that reports generated from our information systems could be relied upon for the purpose of recording revenue transactions in accordance with GAAP; (e) appropriately designed and effectively operating review controls to ensure that appropriate customer discount rates were used to calculate the present value of license contracts with extended payment terms; and (f) effectively designed and operating review controls to ensure that the delivery criterion was met for all license transactions prior to being recognized as revenue.

This material weakness resulted in material post closing adjustments which have been reflected in the financial statements for the period ended June 30, 2008 and all reporting periods through the date of this filing. These adjustments caused changes in accounts receivable, unbilled services, deferred revenue, revenue, commissions, and royalty expenses.

5) *Inadequate and ineffective controls over the accounts receivable function*

We did not have adequate controls to provide reasonable assurance that accounts receivable ledgers were properly maintained and valuation adjustments were properly recognized. Specifically, we did not have (a) appropriately designed configuration controls within our financial systems or effectively operating reconciliation or review controls to ensure that accurate and complete information was captured and reviewed to record sufficient provisions for doubtful accounts; (b) effectively operating reviews of credits and adjustments for sales and withholding taxes to ensure these items were accounted for in accordance with GAAP; and (c) effectively operating reconciliation or review controls over professional services delivered but not billed to ensure appropriate presentation in the balance sheet.

This material weakness resulted in material post closing adjustments which have been reflected in the financial statements for the year ended June 30, 2008 and all reporting periods through the date of this filing. These adjustments caused changes in the valuation of accounts and installments receivable, collateralized receivables, secured borrowing, accrued expenses, unbilled revenue, expenses and interest income.

c) *Changes in Internal Control Over Financial Reporting*

As previously reported in Item 9A of our Annual Report on Form 10-K for the year ended June 30, 2008 we reported material weaknesses in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act). As a result of those material weaknesses in our internal control over financial reporting, our principal financial officer concluded that our internal controls over financial reporting were not effective as of June 30, 2008. Those material weaknesses included the following:

Inadequate and ineffective monitoring controls

Inadequate and ineffective controls over the periodic financial close process;

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Inadequate and ineffective controls over income tax accounting and disclosure;

Inadequate and ineffective controls over the recognition of revenue; and

Inadequate and ineffective controls over the accounts receivable function.

During the quarter ended March 31, 2009, there were no changes in our internal control over financial reporting, however, we made certain changes in the following periods through the date of this filing, as described below.

**d) Remediation Efforts**

We determined that the following material weakness (reported in our 2008 Form 10-K) was remediated as of June 30, 2009:

Inadequate and ineffective controls over the accounts receivable function.

The remediation in fourth quarter of fiscal 2009 included the following:

- 1) We implemented an updated Allowance for Doubtful Account (Receivable) policy to help increase the level and frequency of review of past due accounts in the accounts receivable aging. We also developed systemic aging reports to facilitate review of collection status and customer aging worldwide.
- 2) We enhanced the quality and timeliness of our procedures for the review and approval of customer credit memos and adjustments, including a monthly reconciliation of authorized amounts to actual credits and adjustments recorded.
- 3) We increased the level, frequency and timeliness of review of professional services projects with unbilled and unearned balances to ensure that the amounts recorded as unbilled services or deferred revenue are valid and accurate.

In the first three quarters of fiscal 2009 we hired key financial leaders with subject matter expertise. In our fourth quarter of fiscal 2009, we also implemented the following measures to improve our internal controls over financial reporting process. We plan to further enhance these measures in fiscal 2010.

Integrated and automated our quote to invoicing revenue process within Oracle, to help management increase the level of quality and timely review and reconciliation of complex revenue transactions;

Improved system configuration to automate some critical financial reports to provide management with reliable data to record revenue accurately and completely;

Enhanced management review controls to help ensure that proper accounting for all complex, non-routine transactions is researched, detailed in memoranda and reviewed by senior management prior to recording;

Implemented detailed period end closing and reporting schedule to help ensure that all closing activities were properly monitored and completed in a timely manner;

Enhanced information technology general controls including configuration and user access review to help provide a reliable information infrastructure and reduce level of inefficient manual reviews and reconciliations;

Enhanced procedures to include establishment, review and approval of customer creditworthiness; and

Enhanced procedures and implemented system configuration controls to help ensure that cash flows used or provided from operating, investing and financing activities used to compile the cash flow statement are calculated accurately.



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*e) Remediation Plans*

Management, in coordination with the input, oversight and support of our Audit Committee, has identified the following measures to strengthen our internal control over financial reporting and to address the material weaknesses described above. In addition to improving the effectiveness and compliance with key controls, our remediation efforts involve numerous business and accounting process improvements and the implementation of key system enhancements. The process and system enhancements are generally designed to simplify and standardize business practices and to improve timeliness and access to associated accounting data through increased systems automation. We began implementing certain of these measures prior to the filing of this Form 10-K. While we expect remedial actions to be essentially implemented in fiscal 2010, some may not be in place for a sufficient period of time to help us certify that material weaknesses have been fully remediated as of the end of fiscal year 2010. We will continue to develop our remediation plans and implement additional measures during fiscal 2010 and possibly into fiscal 2011.

Enhance people management to help improve our monitoring controls

Continue our efforts to recruit and retain qualified finance professionals necessary to help ensure the accountability and effective implementation of key controls and remedial actions designed in the areas that material weaknesses were previously identified.

Continue to assess training requirements and the adequacy and expertise of the finance, tax and accounting staff on a global basis.

Enhance the financial reporting process to ensure that we can complete periodic financial closing activities accurately and in a timely manner. Specifically, we will accomplish the following:

Redesign our key accounting process relating to management analysis, estimates and accruals to help ensure that related transactions are properly reviewed and recorded appropriately and in a timely manner;

Redesign our tax accounting function, processes and related controls to ensure that our tax provisions can be completed accurately and in a timely manner;

Enhance our management reporting process to improve the information query and reporting capability and provide reliable data for management to be used in performing timely and effective monitoring of our internal control; and

Redesign our processes in the professional services accounting and management function in order to enhance presales review to accelerate the process for timely revenue accounting determinations, and to help ensure that multiple-element arrangements where services are bundled with a license or other services arrangement are properly accounted for.

Enhance the automation and configuration controls of our information systems to provide reliable data on a consistent basis to improve effectiveness and efficiency of our reconciliation and review controls. Specifically, we will:

Automate our order process including order entry, contract administration, billing and revenue recognition;

Reengineer the professional services process, including automating project accounting, in order to have appropriately designed system configuration controls to ensure that data and reports generated from the system can be relied upon for the purpose of accurately and timely recording revenue in accordance with GAAP.



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In addition to the remedial measures discussed above, we recently introduced a new subscription-based license offering for our aspenONE software suite that was available as of July 9, 2009. This new aspenONE license offering will result in revenue being recognized on a subscription basis over the term of multi-year contracts and we expect that the majority of our customers will purchase under this offering. In our previous license offering, revenue was recognized for the net present value of license fees over the license term in the period in which the license agreement was signed and the software was delivered to the customer. We expect that this change from predominantly up-front revenue recognition will simplify certain business processes and decrease the complexities of our current license revenue recognition model. We expect that the simplification of these business processes combined with the remedial measures discussed above will increase the likelihood of successful remediation of our material weaknesses.

If the remedial measures described above are insufficient to address any of the identified material weaknesses or are not implemented effectively, or additional deficiencies arise in the future, material misstatements in our interim or annual financial statements may occur in the future and we may continue to be delinquent in our filings. We are currently working to improve and simplify our internal processes and implement enhanced controls, as discussed above, to address the material weaknesses in our internal control over financial reporting and to remedy the ineffectiveness of our disclosure controls and procedures. While this implementation phase is underway, we are relying on extensive manual procedures including the use of qualified external consultants and management detailed reviews, to assist us with meeting the objectives otherwise fulfilled by an effective internal control. A key element of our remediation effort is the ability to recruit and retain qualified individuals to support our remediation efforts as well as to complete the significant backlog of work required for us to become current with our SEC filings. While our Audit Committee and Board of Directors have been supportive of our efforts by supporting the hiring of various individuals in finance, treasury, tax and internal audit as well as funding efforts to improve our financial reporting system, improvement in internal control will be hampered if we can not recruit and retain more qualified professionals. Among other things, any unremediated material weaknesses could result in material post-closing adjustments in future financial statements. Furthermore, any such unremediated material weaknesses could have the effects described in "Item 1A. Risk Factors In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to effectively remedy the material weaknesses identified as of March 31, 2009 could result in material misstatements in our financial statements" in Part I of this Form 10-Q.

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

**(a) FTC and Honeywell Settlement**

In December 2004, we entered into a consent decree with the FTC, with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech Ltd. and related subsidiaries of AEA Technology plc (Hyprotech) in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree, we entered into an agreement with Honeywell International, Inc. (Honeywell) on October 6, 2004 (Honeywell Agreement), pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products.

On December 23, 2004, we completed the transactions contemplated by the Honeywell Agreement. Under the terms of the transactions:

We agreed to a cash payment of approximately \$6.0 million from Honeywell in consideration of the transfer of our operator training services business, our covenant not to compete in the

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operator training business until the third anniversary of the closing date, and the transfer of ownership of the intellectual property of our Hyprotech engineering products, \$1.2 million of which was held back by Honeywell and a portion of which was released upon resolution of adjustments for uncollected billed accounts receivable and unbilled accounts receivable, as discussed below;

We transferred and Honeywell assumed, as of the closing date, approximately \$4.0 million in accounts receivable relating to the operator training business; and

We entered into a two-year support agreement with Honeywell under which we agreed to provide Honeywell with source code of new releases of the Hyprotech engineering products provided to customers under standard software maintenance services agreements.

The Honeywell transaction resulted in a deferred gain of \$0.2 million, which was amortized over the two-year life of the support agreement, and was subject to a potential increase of the gain of up to \$1.2 million upon resolution of the holdback payment issue, which is discussed below.

We are subject to ongoing compliance obligations under the FTC consent decree. We responded to requests by the Staff of the FTC beginning in 2006 for information relating to the Staff's investigation of whether we have complied with the consent decree. In addition, the FTC voted to recommend to the Consumer Litigation Division (Division) of the U.S. Department of Justice that the Division commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. Although we believe that we complied with the consent decree and that the assertions by the FTC Staff were without merit, we engaged in settlement discussions with the FTC Staff regarding this matter. Following such discussions, on July 6, 2009, we announced that the FTC closed the investigation relating to the alleged violations of the decree, and issued an order modifying the consent decree. Following a thirty-day period for public comment on the modification to the original decree, the modified order became final on August 20, 2009. The modification to the 2004 consent decree requires that we continue to provide the ability for users to save input variable case data for Aspen HYSYS and Aspen HYSYS Dynamics software in a standard "portable" format, which will make it easier for users to transfer case data from later versions of the products to earlier versions. AspenTech will also provide documentation to Honeywell of the Aspen HYSYS and Aspen HYSYS Dynamics input variables, as well as documentation of the covered heat exchange products. These requirements will apply to all existing and future versions of the covered products through 2014.

In March 2007, we were served with a complaint and petition to compel arbitration filed by Honeywell in New York State Supreme Court. The complaint alleges that we failed to comply with our obligations to deliver certain technology under the Honeywell Agreement, that we owe approximately \$0.8 million to Honeywell under the Honeywell Agreement, and that Honeywell is entitled to some portion of the \$1.2 million holdback retained by Honeywell under the holdback provisions of the Honeywell Agreement, plus unspecified monetary damages. In accordance with the Honeywell Agreement, certain of Honeywell's claims relating to the holdback were the subject of a proceeding before an independent accountant, who determined in December 2008 that we were entitled to a portion of the holdback. We reached a settlement in June 2009 and the matter has been dismissed. In connection with the settlement, AspenTech has provided to Honeywell a license to modify and distribute (in object code form) certain versions of AspenTech's flare system analyzer software.

There is no assurance that the actions required by the FTC's modified order and related settlement with Honeywell will not provide Honeywell with additional competitive advantages that could materially adversely affect our results of operations.

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**(b) Class action and opt-out claims**

In March 2006, we settled class action litigation, including related derivative claims, arising out of our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which we restated in March 2005. Members of the class who opted out of the settlement (representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period) brought their own state or federal law claims against us, referred to as "opt-out" claims.

Separate actions were filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. One of these actions was settled. The claims in the remaining actions (described below) include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in our restated consolidated financial statements referenced in the class action.

*Feldman v. Aspen Technology, Inc., et al.*, filed on July 17, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-3021-BLS2 in that court, is an opt-out claim asserted by an individual who received 323,324 shares of our common stock in an acquisition. We reached a settlement with the plaintiff effective as of March 31, 2009 providing for dismissal of all the plaintiff's claims with prejudice, and a stipulation effectuating the dismissal was filed on May 29, 2009.

*Blecker, et al. v. Aspen Technology, Inc., et al.*, filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, is an opt-out claim asserted by persons who received 248,411 shares of our common stock in an acquisition. Fact discovery in this action closed on July 18, 2008, a non-jury trial began on November 3, 2009. On October 17, 2008, the plaintiffs filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al.*, Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act. We served a motion to dismiss on December 3, 2008 which the plaintiffs have opposed. The motion was argued before the court on March 23, 2009 and is pending.

*380544 Canada, Inc., et al. v. Aspen Technology, Inc., et al.*, filed on February 15, 2007 in the federal district court for the Southern District of New York and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement. Certain motions to dismiss filed by other defendants were resolved on May 5, 2009, and discovery is scheduled to conclude on February 12, 2010.

The remaining claims in the *Blecker* and *380514 Canada* actions referenced above are for damages totaling at least \$20 million, not including claims for treble damages and attorneys' fees. We plan to defend these actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

**(c) ATME Arbitration**

Prior to October 6, 2009, we had an exclusive reseller relationship covering certain countries in the Middle East with a reseller known as , AspenTech Middle East W.L.L., a Kuwait corporation (ATME

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or the reseller). Effective October 6, 2009, we terminated the reseller relationship for material breach by the reseller based on certain actions of the reseller. On November 2, 2009 the reseller filed a Claim Form (Arbitration) in the High Court of Justice, Queen's Bench Division, Commercial Court, London, England, reference 2009 Folio 1436 in the matter of an intended arbitration between the reseller and us, seeking an injunction against certain activities by us in the alleged former territory of the reseller. We believe that the reseller's claims are without merit, inasmuch as our termination of the relationship was based on actions by the reseller constituting material breach as defined in the reseller agreement document, and that the reseller is not entitled to such an injunction. We therefore intend to defend the claims vigorously. We can provide no assurance as to the outcome of this proceeding or the likelihood of the filing of additional proceedings such as a full arbitration, and these claims may result in judgments against us for significant damages and a possible injunction that would threaten our ability to do business directly in certain countries in the Middle East. In addition, regardless of the outcome, such claims may result in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business. The reseller agreement document relating to the terminated relationship contained a provision whereby we could be liable for a termination fee if the agreement were terminated other than for material breach. This fee would be calculated based on a formula contained in the reseller agreement that we believe was originally developed based on certain assumptions about the future financial performance of the reseller, as well as the reseller's actual financial performance. Based on the formula and the financial information provided to us by the reseller, which we have not had the opportunity to verify independently, a recent calculation associated with termination other than for material breach based on the formula would result in a termination fee of between \$60 million and \$77 million. Under the terminated reseller agreement document, no termination fee is owed on termination for material breach.

*(d) Other*

We are currently defending a customer claim of approximately \$5 million that certain of our software products and implementation services failed to meet customer expectations. Although we are defending the claim vigorously, the results of litigation and claims cannot be predicted with certainty, and unfavorable resolutions are possible and could materially affect our results of operations, cash flows or financial position. In addition, regardless of the outcome, litigation could have an adverse impact on us because of defense costs, diversion of management resources and other factors.

**Item 1A. Risk Factors**

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below before purchasing our common stock. The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations. If any of the following risks actually occur, our business, financial condition, results of operations or cash flows would likely suffer. In that case, the trading price of our common stock could fall, and you may lose all or part of the money you paid to buy our common stock.*

**Risks Related to Our Business**

***Our operating results depend on customers in or serving the energy, chemicals, pharmaceutical, and engineering and construction industries, which are highly cyclical, and our operating results may suffer if these industries continue to experience an economic downturn.***

Our operating results depend on companies in or serving the energy, chemicals, engineering and construction and pharmaceutical industries. Accordingly, our future success depends upon the continued demand for manufacturing optimization software and services by companies in these process manufacturing industries. These industries are highly cyclical and highly reactive to the price of oil, as

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well as general economic conditions. At least one of our customers has filed for bankruptcy protection, which may affect associated cash receipts and the extent to which revenue from this customer may be recognized. There is no assurance that other customers may not also seek bankruptcy or other similar relief from creditors, which could adversely affect our results of operations.

Adverse changes in the economy and global economic and political uncertainty have previously caused delays and reductions in IT spending by our customers and a consequent deterioration of the markets for our products and services, particularly our manufacturing/supply chain product suites. If adverse economic conditions persist, we would likely experience reductions, delays and postponements of customer purchases that will negatively impact our operating results.

In addition, in the past, worldwide economic downturns and pricing pressures experienced by energy, chemical, and other process industries have led to consolidations and reorganizations. These downturns, pricing pressures and reorganizations have caused delays and reductions in capital and operating expenditures by many of these companies. These delays and reductions have reduced demand for products and services like ours. A recurrence of these industry patterns, including any recurrence that may occur in connection with current global economic events, as well as general domestic and foreign economic conditions and other factors that reduce spending by companies in these industries, could harm our operating results in the future.

***Securities litigation based on our restatement of our consolidated financial statements due to our prior software accounting practices may subject us to substantial damages and expenses, may require significant management time, and may damage our reputation.***

In March 2006, we settled class action litigation, including related derivative claims, arising out of our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which we restated in March 2005. Members of the class who opted out of the settlement (representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period) brought their own state or federal law claims against us, referred to as "opt-out" claims.

Separate actions were filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. One of these actions was settled. The claims in the remaining actions (described below) include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in our restated consolidated financial statements referenced in the class action.

*Blecker, et al. v. Aspen Technology, Inc., et al.*, filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, is an opt-out claim asserted by persons who received 248,411 shares of our common stock in an acquisition. Fact discovery in this action closed on July 18, 2008, a non-jury trial began on November 3, 2009. On October 17, 2008, the plaintiffs filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al.*, Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act. We served a motion to dismiss on December 3, 2008 which the plaintiffs have opposed. The motion was argued before the court on March 23, 2009 and is pending.

*380544 Canada, Inc., et al. v. Aspen Technology, Inc., et al.*, filed on February 15, 2007 in the federal district court for the Southern District of New York and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement. Certain motions to dismiss filed by

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other defendants were resolved on May 5, 2009, and discovery is scheduled to conclude on February 12, 2010.

The remaining claims in the *Blecker* and *380544 Canada* actions referenced above are for damages totaling at least \$20 million, not including claims for treble damages and attorneys' fees. We plan to defend these actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

We are required to advance legal fees (subject to undertakings of repayment if required) and may be required to indemnify certain of our current or former directors and officers in connection with civil, criminal or regulatory proceedings or actions, and such indemnification commitments may be costly. Our executive and organization liability insurance policies provide only limited liability protection relating to such actions against us and certain of our officers and directors, and will likely not cover the costs of director and officer indemnification or other liabilities incurred by us; accordingly, if we are unable to achieve a favorable settlement thereof, our financial condition could be materially harmed. Also, increased premiums could materially harm our financial results in future periods. Our inability to obtain coverage due to prohibitively expensive premiums would make it more difficult to retain and attract officers and directors and expose us to potentially self-funding any potential future liabilities ordinarily mitigated by such liability insurance.

***The modification of the consent decree with the Federal Trade Commission and the related settlement with Honeywell International, Inc. could have a material adverse effect on our business and financial condition.***

In December 2004, we entered into a consent decree with the Federal Trade Commission (FTC) with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech Ltd. and related subsidiaries of AEA Technology plc (Hyprotech) in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree, we entered into an agreement with Honeywell International, Inc. (Honeywell), on October 6, 2004 (Honeywell Agreement), pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products. We are subject to ongoing compliance obligations under the FTC consent decree. We responded to requests by the Staff of the FTC beginning in 2006 for information relating to the Staff's investigation of whether we have complied with the consent decree. In addition, the FTC voted to recommend to the Consumer Litigation Division (Division) of the U.S. Department of Justice that the Division commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. Although we believe that we complied with the consent decree and that the assertions by the FTC Staff were without merit, we engaged in settlement discussions with the FTC Staff regarding this matter. Following such discussions, on July 6, 2009, we announced that the FTC closed the investigation relating to the alleged violations of the decree, and issued an order modifying the consent decree. Following a thirty-day period for public comment on the modification to the original decree, the modified order became final on August 20, 2009. The modification to the 2004 consent decree requires that we continue to provide the ability for users to save input variable case data for Aspen HYSYS and Aspen HYSYS Dynamics software in a standard "portable" format, which will make it easier for users to transfer case data from later versions of the products to earlier versions. AspenTech will also provide documentation to Honeywell of the Aspen HYSYS and Aspen HYSYS Dynamics input variables, as well as documentation of the covered heat exchange products. These requirements will apply to all existing and future versions of the covered products up to 2014. In addition, in connection with the settlement of the related litigation with Honeywell, AspenTech has



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provided to Honeywell a license to modify and distribute (in object code form) certain versions of AspenTech's flare system analyzer software. There is no assurance that the actions required by the FTC's modified order and related settlement with Honeywell will not provide Honeywell with additional competitive advantages that could materially adversely affect our results of operations.

***In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to remedy the material weaknesses identified as of June 30, 2009 could result in material misstatements in our financial statements.***

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934 (Exchange Act). Our management identified four material weaknesses in our internal control over financial reporting as of June 30, 2009. A material weakness is defined as a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The material weaknesses identified by management as of June 30, 2009 consisted of:

Inadequate and ineffective monitoring controls;

Inadequate and ineffective controls over the periodic financial close process;

Inadequate and ineffective controls over income tax accounting and disclosure; and

Inadequate and ineffective controls over the recognition of revenue.

As a result of these material weaknesses, our management concluded as of June 30, 2009 that our internal control over financial reporting was not effective based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control - An Integrated Framework* (September 1992).

We have begun to implement and continue to implement remedial measures designed to address these material weaknesses. If these remedial measures are insufficient to address these material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, we may fail to meet our future reporting obligations on a timely basis, our consolidated financial statements may contain material misstatements, we could be required to restate our prior period financial results, our operating results may be harmed, we may be subject to class action litigation, and if we regain listing on a public exchange, our common stock could be delisted from that exchange. Any failure to address the identified material weaknesses or any additional material weaknesses in our internal control could also adversely affect the results of the periodic management evaluations regarding the effectiveness of our internal control over financial reporting that are required to be included in our annual reports on Form 10-K. Internal control deficiencies could also cause investors to lose confidence in our reported financial information. We can give no assurance that the measures we plan to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or additional restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

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*If in the future we are not current in our SEC filings, we will face several adverse consequences.*

If we are unable to remain current in our financial filings, investors in our securities will not have information regarding our business and financial condition with which to make decisions regarding investment in our securities. In addition, we would not be able to have a registration statement under the Securities Act of 1933 (Securities Act), covering a public offering of securities declared effective by the SEC, and we would not be able to make offerings pursuant to existing registration statements or pursuant to certain "private placement" rules of the SEC under Regulation D to any purchasers not qualifying as "accredited investors." The lack of an effective registration statement would also result in our employees being unable to exercise vested options, which could affect our ability to attract and retain qualified personnel. We also would not be eligible to use a "short form" registration statement on Form S-3 for a period of twelve months after the time we became current in our filings. These restrictions may impair our ability to raise funds should we desire to do so and may adversely affect our financial condition. If we are unable to remain current in our filings, and we are not able to obtain waivers under our financing arrangements, it might become necessary to repay certain borrowings, which could have a material adverse effect on our results of operations.

*Our common stock has been delisted from The NASDAQ Stock Market and transferred to the Pink Sheets electronic quotation service, which may, among other things, reduce the price of our common stock and the levels of liquidity available to our stockholders.*

As a result of our inability to timely file the Form 10-K for fiscal year 2007, NASDAQ issued a Staff Determination to us that, in the absence of a request for a hearing, would have resulted in suspension of trading of our common stock, and filing of a Form 25-NSE with the SEC to remove our securities from listing and registration on The NASDAQ Stock Market. NASDAQ subsequently issued an Additional Staff Determination citing our inability to timely file our Form 10-Q for the quarterly period ended September 30, 2007 as an additional basis for delisting our securities. An oral hearing was held at our request on November 15, 2007. At the hearing, we requested an extension of time to cure our SEC filing deficiency. The NASDAQ Listing Qualifications Panel, or the Panel, determined on January 7, 2008 to grant our request for continued listing, subject to certain conditions, including filing our Form 10-K for fiscal year 2007 and our Form 10-Q for the quarterly period ended September 30, 2007, by January 18, 2008. On January 28, 2008, the Panel granted our request for an extension for continued listing on The NASDAQ Global Market through February 8, 2008. On February 14, 2008, we received a letter advising us that the NASDAQ Listing Qualifications Panel had determined to delist our shares from The NASDAQ Stock Market, and trading of our shares was suspended effective at the open of business on February 19, 2008. Our common stock has been quoted on the Pink OTC Markets Inc. electronic quotation service beginning on February 19, 2008.

There is no assurance that we will regain listing of our common stock on a public exchange. If we regain listing and thereafter fail to keep current in our SEC filings or to comply with the applicable continued listing requirements, our common stock might be and subsequently would trade in the Pink Sheets electronic quotation service, or the Pink Sheets. The trading of our common stock in the Pink Sheets may reduce the price of our common stock and the levels of liquidity available to our stockholders. In addition, the trading of our common stock in the Pink Sheets would materially adversely affect our access to the capital markets, and the limited liquidity and potentially reduced price of our common stock could materially adversely affect our ability to raise capital through alternative financing sources on terms acceptable to us or at all. Stocks that trade in the Pink Sheets are no longer eligible for margin loans, and a company trading in the Pink Sheets cannot avail itself of federal preemption of state securities or "blue sky" laws, which adds substantial compliance costs to securities issuances, including pursuant to employee option plans, stock purchase plans and private or public offerings of securities. If we regain listing and are delisted in the future and transferred to the

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Pink Sheets, there may also be other negative implications, including the potential loss of confidence by suppliers, customers and employees, and the loss of institutional investor interest in our company.

***Our international operations are complex and if we fail to manage those operations effectively, the growth of our business would be limited and our operating results would be adversely affected.***

As of October 31, 2009, we had 26 offices in 21 countries. We sell our products primarily through a direct sales force located throughout the world. In the event that we are unable to adequately staff and maintain our foreign operations, we could face difficulties managing our international operations. We also rely, to a lesser extent, on distributors and resellers to sell our products and market our services internationally, and our inability to manage and maintain those relationships would limit our ability to generate revenue outside the U.S. Effective October 6, 2009, we terminated a reseller outside the U.S. See our risk factor below titled "*Our revenue growth, operating results, financial condition or cash flows may be materially and adversely affected by recent events in connection with reseller relationships.*" The complexities of our operations also require us to make significant expenditures to ensure that our operations are compliant with regulatory requirements in numerous foreign jurisdictions. To the extent we are unable to manage the various risks associated with our complex international operations effectively, the growth and profitability of our business may be adversely affected.

***Our business may suffer if we fail to address challenges associated with transacting business internationally.***

Customers outside the U.S. accounted for a material amount of our total revenues in fiscal 2009 and 2008. We anticipate that revenues from customers outside the U.S. will continue to account for a material portion of our total revenues for the foreseeable future. Our operations outside the U.S. are subject to additional risks, including:

unexpected changes in regulatory requirements, exchange rates, tariffs and other barriers;

political and economic instability and possible nationalization of property by governments without compensation to the owners;

less effective protection of intellectual property;

difficulties and delays in translating products and product documentation into foreign languages;

difficulties and delays in negotiating software licenses compliant with accounting revenue recognition requirements in the U.S.;

difficulties in collecting trade accounts receivable in other countries; and

adverse tax consequences.

In addition, the impact of future exchange rate fluctuations on our operating results cannot be accurately predicted. From time to time we have engaged in economic hedging of a significant portion of installment contracts denominated in foreign currencies. In fiscal 2009 we stopped engaging in economic hedging; however, we may resume this practice in the future. Any hedging policies we implement may not be successful, and the cost of these hedging techniques may have a significant negative impact on our operating results.

***Competition from software offered by current competitors and new market entrants, as well as from internally developed solutions, could adversely affect our ability to sell our software products and related services and could result in pressure to price our products in a manner that reduces our margins.***

Our markets in general are highly competitive and differ among our three principal product areas: engineering, manufacturing, and supply chain management. Our engineering software competes with

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products of businesses such as ABB Ltd, Chemstations, Inc., Honeywell International, Inc., Invensys plc, KBC Advanced Technologies plc, and Shell Global Solutions International BV. Our manufacturing software competes with products of companies such as ABB Ltd., Honeywell International, Inc., Invensys plc, OSIsoft, Inc., Rockwell Automation, Inc., Siemens AG and SAP. Our supply chain management software competes with products of companies such as i2 Technologies, Inc., Infor Global Solutions, Manugistics, Inc. (a subsidiary of JDA Software Group, Inc.), Oracle Corporation, and SAP. In addition, we face competition in all areas of our business from large companies in the process industries that have internally developed their own proprietary software solutions.

Many of our current and potential competitors have greater financial, technical, marketing, service and other resources than we have. As a result, these companies may be able to offer lower prices, additional products or services, or other incentives that we cannot match or offer. These competitors may be in a stronger position to respond more quickly to new technologies and may be able to undertake more extensive marketing campaigns. We believe they also have adopted and may continue to pursue more aggressive pricing policies and make more attractive offers to potential customers, employees and strategic partners. In addition, many of our competitors have established, and may in the future continue to establish, cooperative relationships with third parties to improve their product offerings and to increase the availability of their products in the marketplace. Competitors with greater financial resources may make strategic acquisitions to increase their ability to gain market share or improve the quality or marketability of their products.

Competition could seriously impede our ability to sell additional software products and related services on terms favorable to us. Businesses may continue to enhance their internally developed solutions, rather than investing in commercial software such as ours. Our current and potential commercial competitors may develop and market new technologies that render our existing or future products obsolete, unmarketable or less competitive. In addition, if these competitors develop products with similar or superior functionality to our products, we may need to decrease the prices for our products in order to remain competitive. If we are unable to maintain our current pricing due to competitive pressures, our margins will be reduced and our operating results will be negatively affected. We cannot assure you that we will be able to compete successfully against current or future competitors or that competitive pressures will not materially adversely affect our business, financial condition and operating results.

***If we fail to develop new software products or enhance existing products and services, we will be unable to implement our product strategy successfully and our business could be seriously harmed.***

Enterprises are requiring their application software vendors to provide greater levels of functionality and broader product offerings. Moreover, competitors continue to make rapid technological advances in computer hardware and software technology and frequently introduce new products, services and enhancements. We must continue to enhance our current product line and develop and introduce new products and services that keep pace with increasingly sophisticated customer requirements and the technological developments of our competitors. Our business and operating results could suffer if we cannot successfully respond to the technological advances of competitors, or if our new products or product enhancements and services do not achieve market acceptance.

Under our business plan, we are implementing a product strategy that unifies our software solutions under the aspenONE brand with differentiated aspenONE vertical solutions targeted at specific process industry segments. We cannot assure you that our product strategy will result in products that will meet market needs and achieve significant market acceptance.

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***Defects or errors in our software products could harm our reputation, impair our ability to sell our products and result in significant costs to us.***

Our software products are complex and may contain undetected defects or errors. We have not suffered significant harm from any defects or errors to date, but we have from time to time found defects in our products and we may discover additional defects in the future. We may not be able to detect and correct defects or errors before releasing products. Consequently, we or our customers may discover defects or errors after our products have been implemented. We have in the past issued, and may in the future need to issue, corrective releases of our products to remedy defects or errors. The occurrence of any defects or errors could result in:

lost or delayed market acceptance and sales of our products;

delays in payment to us by customers;

product returns;

injury to our reputation;

diversion of our resources;

legal claims, including product liability claims, against us;

increased service and warranty expenses or financial concessions; and

increased insurance costs.

Defects and errors in our software products could result in an increase in service and warranty costs or claims for substantial damages against us.

***We may be subject to significant expenses and damages because of liability claims related to our products and services.***

We may be subject to significant expenses and damages because of liability claims related to our products and services. The sale and implementation of certain of our software products and services, particularly in the areas of advanced process control, supply chain and optimization, entail the risk of product liability claims and associated damages. Our software products and services are often integrated with our customers' networks and software applications and are used in the design, operation and management of manufacturing and supply chain processes at large facilities, often for mission critical applications.

Any errors, defects, performance problems or other failure of our software could result in significant liability to us for damages or for violations of environmental, safety and other laws and regulations. We are currently defending a customer claim of approximately \$5 million that certain of our software products and implementation services failed to meet customer expectations. In addition, our software products and implementation services could continue to give rise to warranty and other claims. We are unable to determine whether resolution of any of these matters will have a material adverse impact on our financial position, cash flows or results of operations, or, in many cases, reasonably estimate the amount of the loss, if any, that may result from the resolution of these matters.

Our agreements with our customers generally contain provisions designed to limit our exposure to potential product liability claims. It is possible, however, that the limitation of liability provisions in our agreements may not be effective as a result of federal, foreign, state or local laws or ordinances or unfavorable judicial decisions. A substantial product liability judgment against us could materially and adversely harm our

operating results and financial condition. Even if our software is not at fault, a product liability claim brought against us could be time-consuming, costly to defend and harmful to our operations.

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***Implementation of some of our products can be difficult and time-consuming, and customers may be unable to implement those products successfully or otherwise achieve the benefits attributable to them.***

Some scheduling applications and integrated supply chain products must integrate with the existing computer systems and software programs of our customers. This can be complex, time-consuming and expensive. As a result, some customers may have difficulty in implementing those products or be unable to implement them successfully or otherwise achieve the benefits attributable to them. Delayed or ineffective implementation of those software products or related services may limit our ability to expand our revenues and may result in customer dissatisfaction, harm to our reputation and customer unwillingness to pay the fees associated with these products.

***We may suffer losses on fixed-price professional service engagements.***

We undertake a portion of our professional service engagements on a fixed-price basis. Under these types of engagements, we bear the risk of cost overruns and inflation, and in the past we have experienced cost overruns, which on occasion have been significant. Should the number of our fixed-price engagements increase in the future, we may experience additional cost overruns which could have a more pronounced impact on our operating results.

***We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.***

We regard our software as proprietary and rely on a combination of copyright, patent, trademark and trade secret laws, license and confidentiality agreements, and software security measures to protect our proprietary rights. We have registered or have applied to register several of our significant trademarks in the U.S. and in certain other countries. We generally enter into non-disclosure agreements with our employees and customers, and historically have restricted access to our software products' source codes, which we regard as proprietary information. In a few cases, we have provided copies of the source code for some of our products to customers solely for the purpose of special product customization and have deposited copies of the source code for some of our products in third-party escrow accounts as security for ongoing service and license obligations. In these cases, we rely on non-disclosure and other contractual provisions to protect our proprietary rights.

The steps we have taken to protect our proprietary rights may not be adequate to deter misappropriation of our technology or independent development by others of technologies that are substantially equivalent or superior to our technology. Any misappropriation of our technology or development of competitive technologies could harm our business and could force us to incur substantial costs in protecting and enforcing our intellectual property rights. The laws of some countries in which our products are licensed do not protect our intellectual property rights to the same extent as the laws of the U.S.

***Third-party claims that we infringe the intellectual property rights of others may be costly to defend or settle and could damage our business.***

We cannot be certain that our software and services do not infringe issued patents, copyrights, trademarks or other intellectual property rights of third parties. Litigation regarding intellectual property rights is common in the software industry, and we may be subject to legal proceedings and claims from time to time, including claims of alleged infringement of intellectual property rights of third parties by us or our licensees concerning their use of our software products and integration technologies and services. Although we believe that our intellectual property rights are sufficient to allow us to market our software without incurring liability to third parties, third parties may bring claims of infringement against us. Because our software is integrated with our customers' networks and business processes, as well as other software applications, third parties may bring claims of infringement



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against us, as well as our customers and other software suppliers, if the cause of the alleged infringement cannot easily be determined. Such claims may be with or without merit.

Claims of alleged infringement may have a material adverse effect on our business and may discourage potential customers from doing business with us on acceptable terms, if at all. Defending against claims of infringement may be time-consuming and may result in substantial costs and diversion of resources, including our management's attention to our business. Furthermore, a party making an infringement claim could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our software or require that we re-engineer some or all of our products. Claims of intellectual property infringement also might require us to enter costly royalty or license agreements. We may be unable, however, to obtain royalty or license agreements on terms acceptable to us or at all. Our business, operating results and financial condition could be harmed significantly if any of these events occurred, and the price of our common stock could be adversely affected. Furthermore, former employers of our current and future employees may assert that our employees have improperly disclosed confidential or proprietary information to us. In addition, we have agreed, and may agree in the future, to indemnify certain of our customers against claims that our software infringes upon the intellectual property rights of others. Although we carry general liability insurance, our current insurance coverage may not apply to, and likely would not protect us from, liability that may be imposed under any of the types of claims described above.

***Because some of our software products incorporate or otherwise require technology licensed from, or provided by, third parties, the loss of our right to use that third-party technology or defects in that technology could harm our business.***

Some of our software products incorporate or otherwise require technology that is licensed from, or otherwise provided by, third parties. There is no assurance that the suppliers of such software will continue to license to us or that they will renew or not terminate the license contracts. Any interruption in the supply or support of any such third-party software could materially adversely affect our sales, unless and until we can replace the functionality provided by the third-party software. In addition, we depend on these third parties to deliver and support reliable products, enhance our current software, develop new software on a timely and cost-effective basis and respond to emerging industry standards and other technological changes. The failure of these third parties to meet these criteria could materially harm our business.

***If we are not successful in attracting, integrating and retaining highly qualified personnel, we may not be able to successfully implement our business strategy.***

Our ability to establish and maintain a position of technology leadership in the highly competitive software market depends in large part upon our ability to attract, integrate and retain highly qualified managerial, sales, technical and accounting personnel. Competition for qualified personnel in the software industry is intense. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Our future success will depend in large part on our ability to attract, integrate and retain a sufficient number of highly qualified personnel, and there can be no assurance that we will be able to do so.

***Our revenue growth, operating results, financial condition or cash flows may be materially and adversely affected by recent events in connection with reseller relationships.***

Prior to October 6, 2009, we had an exclusive reseller relationship covering certain countries in the Middle East with a reseller known as , AspenTech Middle East W.L.L., a Kuwait corporation (ATME or the reseller). Effective October 6, 2009, we terminated the reseller relationship for material breach

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by the reseller based on certain actions of the reseller. On November 2, 2009 the reseller filed a Claim Form (Arbitration) in the High Court of Justice, Queen's Bench Division, Commercial Court, London, England, reference 2009 Folio 1436 in the matter of an intended arbitration between the reseller and us, seeking an injunction against certain activities by us in the alleged former territory of the reseller. We believe that the reseller's claims are without merit, inasmuch as our termination of the relationship was based on actions by the reseller constituting material breach as defined in the reseller agreement document, and that the reseller is not entitled to such an injunction. We therefore intend to defend the claims vigorously. We can provide no assurance as to the outcome of this proceeding or the likelihood of the filing of additional proceedings such as a full arbitration, and these claims may result in judgments against us for significant damages and a possible injunction that would threaten our ability to do business directly in certain countries in the Middle East. In addition, regardless of the outcome, such claims may result in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business. The reseller agreement document relating to the terminated relationship contained a provision whereby we could be liable for a termination fee if the agreement were terminated other than for material breach. This fee would be calculated based on a formula contained in the reseller agreement that we believe was originally developed based on certain assumptions about the future financial performance of the reseller, as well as the reseller's actual financial performance. Based on the formula and the financial information provided to us by the reseller, which we have not had the opportunity to verify independently, a recent calculation associated with termination other than for material breach based on the formula would result in a termination fee of between \$60 million and \$77 million. Under the terminated reseller agreement document, no termination fee is owed on termination for material breach.

**Risks Related to Our Common Stock**

*Our common stock may experience substantial price and volume fluctuations.*

The equity markets have from time to time experienced extreme price and volume fluctuations, particularly in the high technology sector, and those fluctuations have often been unrelated to the operating performance of particular companies. In addition, factors such as changes to our business model, our financial performance, announcements of technological innovations or new products by us or our competitors, as well as market conditions in the computer software or hardware industries, may have a significant impact on the market price of our common stock.

In the past, following periods of volatility in the market price of a public company's securities, securities class action litigation has often been instituted against the company. This type of litigation against us could result in substantial liability and costs and divert management's attention and resources.

*Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from executing our business plan.*

We expect that our current cash balances, future cash flows from our operations, and continued ability to sell installment receivable contracts will be sufficient to meet our anticipated cash needs for at least the next twelve months. We may need to obtain additional financing thereafter or earlier, however, if our current plans and projections prove to be inaccurate or our expected cash flows prove to be insufficient to fund our operations because of lower-than-expected revenues, fewer sales of installment receivable contracts, unanticipated expenses or other unforeseen difficulties.

Our ability to obtain additional financing will depend on a number of factors, including market conditions, our operating performance, the quality of our installment receivable contracts, and the availability of capital in the credit markets. These factors may make the timing, amount, terms and

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conditions of any financing unattractive. If adequate funds are not available, or are not available on acceptable terms, we may have to forego strategic acquisitions or investments, reduce or defer our development activities or delay our introduction of new products and services.

Any additional capital raised through the sale of equity or convertible debt securities may dilute the existing shareholder percentage ownership of our common stock. Furthermore, any new securities we issue could have rights, preferences and privileges superior to our common stock. Capital raised through debt financings could require us to make periodic interest payments and could impose potentially restrictive covenants on the conduct of our business.

***Our corporate documents and provisions of Delaware law may prevent a change in control or management that stockholders may consider desirable.***

Section 203 of the Delaware General Corporation Law, our charter and our by-laws contain provisions that might enable our management to resist a takeover of our company.

These provisions include:

limitations on the removal of directors;

a classified board of directors, so that not all members of our board are elected at one time;

advance notice requirements for stockholder proposals and nominations;

the inability of stockholders to act by written consent or to call special meetings;

the ability of our board of directors to make, alter or repeal our by-laws; and

the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval.

These provisions could:

have the effect of delaying, deferring or preventing a change in control of our company or a change in our management that stockholders may consider favorable or beneficial;

discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions; and

limit the price that investors might be willing to pay in the future for shares of our common stock.

***Sales of shares of common stock issued upon the conversion of our previously outstanding Series D-1 preferred stock may result in a decrease in the price of our common stock.***

Private equity funds managed by Advent International Corporation have the right to require that we register under the Securities Act the shares of common stock that were issued upon the conversion of our previously outstanding Series D-1 preferred stock and upon the exercise of certain previously outstanding warrants. In addition, these funds could sell certain of such shares without registration. In May 2006, we received a demand letter from such funds requesting the registration of all of the shares of common stock covered by those registration rights, for sale in

an underwritten public offering. Pursuant to this request, in April 2007 we filed a registration statement for a public offering of 18,000,000 shares of common stock held by such funds. The registration statement also covered 2,700,000 shares that would be subject to an option to be granted to the underwriters by such funds solely to cover overallocments. On July 30, 2008, we applied to withdraw this registration statement and requested the SEC's consent thereto. Any sale of common stock into the public market could cause a decline in the trading price of our common stock.

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***There may be an increase in the sales volume of our common stock when we are current in our Exchange Act filings, and any sales of shares into the public market may cause a decline in the trading price of our common stock.***

As previously disclosed, on December 6, 2007, our board of directors approved the extension of the exercise periods of certain outstanding stock options that would otherwise likely expire prior to our becoming current in our SEC '34 Act report filings. When we were not current in those filings, we were unable, under applicable securities laws, to issue shares pursuant to exercises of options. Sales of shares upon exercise of those and other options, or sales of shares subsequent to lapse of forfeiture restrictions on restricted stock units, may cause increased selling pressure in the market for our stock, which has generally traded at volume levels substantially less than those prior to the delisting of our common stock from the NASDAQ Stock Market on February 19, 2008. Any sales of shares into the public market may cause a decline in the trading price of our common stock.

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**Item 6. Exhibits**

Exhibit Number	Description	Filed with this Form 10-Q	Incorporated by Reference		Exhibit Number
			Form	Filing Date with SEC	
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	X			
31.2	Certification of Senior Vice President and Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	X			
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			



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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>	<b>Filed with this Form 10-Q</b>	<b>Incorporated by Reference</b>		<b>Exhibit Number</b>
			<b>Form</b>	<b>Filing Date with SEC</b>	
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	X			
31.2	Certification of Senior Vice President and Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	X			
32.1	Certification of President and Chief Executive Officer and Senior Vice President and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			